

Summation - Defendant

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1 Mr. Schechter, if you would please?

2 MR. SCHECHTER: Your Honor, may it please the
3 Court, Mr. Gopaul, Ms. Johnson, ladies and gentlemen.

4 Now, at the beginning of this case during
5 voir dire we spoke of not letting emotions get in the
6 way of your approach to this case.

7 If you recall, I had informed you you might
8 hear some disturbing things which, of course, you did
9 during the course of this trial.

10 And, of course, my concern was and still is
11 that because of the emotional impact - you've seen a
12 young lady get up on the witness stand and say some
13 pretty horrific things about her stepfather - that
14 might have, in some way, caused to you close the door
15 insofar as your analysis of this case.

16 And I'm going to ask you to try to somewhat
17 be lawyers in this case and be dispassionate and calmly
18 analyze the facts and the inferences from the facts as
19 I'm going to relate them to you because if you don't do
20 that then you're not giving the People of the State of
21 New York or Mr. Gopaul a fair trial and you all
22 promised that you would be able to do that and I have
23 faith that you will be able to do that.

24 Now, you heard testimony from the complainant
25 and three police officers and we're informed that

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1 Mr. Gopaul made three separate statements to the
2 police.

3 Now, what I would like to do is I would like
4 to take you through the series of these statements and
5 analyze them and I'm asking you to do the same thing.

6 Now, firstly, I'm not going to be -- I'm not
7 going to stand up here and ask you to deny what you saw
8 with your own eyes insofar as Mr. Gopaul's last
9 statement, the videotape.

10 Rather than do that what I want to do is I
11 want you to try to understand the circumstances under
12 which those statements were made, to try to put
13 yourself in his mind, to try to put yourself in the
14 situation to see what it is that occurred here.

15 Now, I did not cross-examine
16 Detective Shulman and Police Officer Alfaro to get them
17 in trouble by improper billing of overtime. That
18 wasn't my purpose in cross-examining them and asking
19 them about their memo books and, "How much overtime did
20 you bill?"

21 I was trying to build a time construction for
22 you.

23 And what do I mean by that?

24 Well, we have a very interesting kind of
25 dynamic here.

1 Detective Shulman says that his tour was
2 approximately 4 to 1 a.m. on June 23rd into June 24th,
3 2008.

4 As such, his tour finished at 1 o'clock. For
5 some reason that he can't tell you, because I asked him
6 several times, "Well, Detective Schulman, what were you
7 doing between 1 and 2:30 a.m.?"

8 "I don't recall."

9 Now, police officers, as you heard, are
10 required to keep memo books. Detective Shulman kept a
11 memo book. Interestingly, in that memo book there was
12 not one notation about this interaction with
13 Mr. Gopaul, not one notation about when Mr. Gopaul came
14 to the precinct, when he first began to speak to
15 Mr. Gopaul, when he first started to speak to the
16 complainant, whether he did anything in his memo book
17 and that's the first thing they have because the
18 sergeants check their time. They want to make sure a
19 police officer is not being derelict. So he signs off
20 on his book, "Okay," sergeant, "you're here, carry on."

21 Interestingly, as well in his memo book,
22 despite what he told you, were the words, which
23 appeared to me, assigned homicide investigation,
24 nothing about Mr. Gopaul.

25 So that raises the question why was

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1 Detective Shulman, after his tour of duty was over --
2 firstly, why is he in the precinct and, secondly, why
3 was he assigned to Mr. Gopaul's case.

4 And that question follows up, why was
5 Police Officer Alfaro assigned to make an arrest that
6 already had occurred and billed the City of New York
7 for two tours of duty, that's 16 hours times time and a
8 half?

9 Aside from that being not only a waste of
10 taxpayer money, but I don't care about that, we're in
11 Nassau County here, why would the sergeant, O'Hagen,
12 who was on duty at the time Mr. Gopaul came into the
13 precinct, or whatever sergeant it was, think it was
14 O'Hagan, why would he assign an officer from outside
15 the precinct?

16 Why would he assign an officer not even there
17 to take or take credit for an arrest she didn't do?

18 All she did, if you remember her testimony,
19 is when she came to the precinct she had a conversation
20 with the complaining witness, she then processed
21 Mr. Gopaul's fingerprinting, whatever, and then she and
22 the complainant -- and there was a little bit of an
23 inconsistency.

24 The complainant says, "I don't know if
25 Shulman was there."

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1 Alfaro can't even remember if Shulman was
2 there and this is very interesting.

3 Why would they not have this in their heads?

4 Shulman did not testify to going out with the
5 complainant to the car.

6 Be that as it may, Alfaro goes to the car and
7 removes this little hatchet thing I'm sure the District
8 Attorney is going to show you, this thing that's about
9 this big.

10 Interestingly enough, the vibrator she
11 removed from the car apparently was not the vibrator
12 allegedly used on Sana Awan, an event, incidentally,
13 that was denied by Mr. Gopaul. Never accounted for the
14 vibrator.

15 It was described according to Detective
16 Shulman. He says my client drew that diagram and if
17 you look there is a difference in the way that
18 statement was taken.

19 The first part of the statement was a
20 narrative in my client's writing. The second was in
21 his writing. We'll get to that a little bit later.

22 However, the interplay of these police
23 officers and how they came to this case is relevant for
24 this reason.

25 Sergeant O'Hagen apparently told

1 Detective Shulman that he aided in the apprehension of
2 Mr. Gopaul.

3 Mr. Gopaul didn't have to be apprehended. He
4 went to the precinct to check on the whereabouts of
5 Sana Awan. Where is she? She's not home. So there
6 was no apprehension involved at all. Mr. Gopaul was,
7 in fact, arrested prior to Detective Shulman and prior
8 to Police Officer Alfaro having any connection with
9 him.

10 So, why would a sergeant assign two unrelated
11 officers to this case?

12 Well, very interesting that Detective Shulman
13 calls himself a detective who was assigned to enhance
14 an arrest.

15 What does it mean to enhance an arrest?

16 That's the first time I ever heard that
17 terminology in 40 years of practicing law, enhancing
18 arrest.

19 Now, if you look at the news I'm sure you
20 know what enhancing interrogation is because we have
21 problems in Abu Ghraib about what is called enhancing
22 interrogation.

23 MS. JOHNSON: Objection.

24 THE COURT: No, I'll allow it. Overruled.

25 MR. SCHECHTER: So enhancing interrogation

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1 means he is the precinct hatchet man. He is the one
2 who stayed beyond his time, not mentioned in his memo
3 book at all. He's there to put the force and the
4 threats where they're supposed to be.

5 Now, I had asked him when I put the videotape
6 on and I asked you and he to please look at
7 Mr. Gopaul's appearance on the videotape and you'll
8 notice that his collar is completely dishevelled and
9 separated, separated completely unnaturally to here.
10 There would have been no reason for that to happen
11 unless someone grabbed you by the lapels like that and
12 then threw you down because he's doing force to the
13 garment.

14 Mr. Gopaul, I submit to you, when he came
15 into that precinct, was set upon by more than one
16 police officer, one of whom was Sergeant O'Hagen, who
17 was the desk sergeant, so he couldn't get away from
18 that, and several other police officers.

19 None of those police officers are mentioned
20 in any reports of the Police Department. They don't
21 even have the name of the original arresting officer.

22 Now, don't you find that to be strange?

23 I make an arrest -- you come into the
24 precinct and I say, "You're under arrest, please put
25 your hands behind your back. I'm the arresting

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1 officer. It's my tour of duty. I'm on duty at the
2 precinct. You're under arrest."

3 That person, Detective Shulman, does a Scooby
4 Doo, "I don't know."

5 Sergeant -- Officer Alfaro, "I don't know."

6 No one knows the identity of this arresting
7 officer.

8 Now, why is that?

9 Why doesn't anybody know who the arresting
10 officer was?

11 I'll tell you why not. Because they're
12 trying to hide the identity of the arresting officer.

13 And how do we know that?

14 Well, first, no one on duty was given the
15 task of following through with the arrest. Very
16 strange. You place the man under arrest, follow
17 through with the arrest. You're a patrolman on duty,
18 you're working a tour, but the sergeant calls Police
19 Officer Alfaro out of patrol back to the precinct and
20 at the end of her tour she now follows through with the
21 arrest for two separate overtime assignments.

22 The reason they're doing that is to shield
23 the police officers who actually placed him under
24 arrest from scrutiny as to what they did to him.

25 Detective Shulman puts the cherry on top of

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1 that. All right, so, we have Mr. Gopaul arriving at
2 the precinct about 4:45 to 5 a.m. in the morning,
3 June 24th. Detective Shulman tells us he went in and
4 out, in and out. He says he was with the complaining
5 witness for approximately two and a half hours, I
6 believe that was his testimony, pretty much had a
7 pretty good interview with the complaining witness,
8 Sana Awan.

9 That being said, Detective Shulman goes back,
10 speaks to my client and he asks him, "Do you want to
11 make a statement," reads him his rights.

12 Now, whether he reads him his rights or not,
13 you're shook up, you're thrown about. At this point
14 you're isolated in a room, a cubical that I passed
15 around for you to see that's marked for complainants
16 only. Complainants are victims.

17 Why was he put in a room for complainants
18 when they had that big room downstairs that eventually
19 the videotape was shown in?

20 They had other rooms in the place.

21 Why was he put in the room for complainants?

22 Why wasn't Sana Awan put in there?

23 The reason is -- and he lied to you,
24 incidentally, about the dimensions of the room. He
25 made it bigger after he testified at the hearing

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1 because he wanted it to seem like it's not as small.

2 The reason he put my client in a confined
3 space to try to coerce a confession out of him, part of
4 his duties as an enhancing officer.

5 My client therefore wrote a statement in
6 which he goes into this -- that the family went to a
7 fair and his daughter was acting up and Mrs. Gopaul
8 apparently had a swollen tooth and he slapped her
9 because she was not being -- not behaving properly.
10 Okay, fine. That's the statement he makes to
11 Detective Shulman.

12 All of a sudden we now get a metamorphosis.
13 Shulman gets back, even though he knew right away that
14 Sana Awan told him all these nasty things, he comes
15 back and he says, "You're step-daughter made some very
16 serious allegations. Direct examination of Detective
17 Shulman, "Well, Detective Shulman, did you tell
18 Mr. Gopaul the specifics of what Sana Awan told you?"
19 "No, never did." I'm going to get into that. As a
20 matter of fact, I'm going to get into that right now.

21 Sana Awan told Detective Shulman that the
22 incidents for which my client is charged occurred at
23 400 Community Drive.

24 Mr. Gopaul, in his second confession, says
25 the events occurred at Community Drive, never admits

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1 force. I'll get into that a little later.

2 The events occurred at 400 Community Drive.

3 Now, Sana Awan had been there ten times
4 before.

5 His customer is there. He's been there
6 hundreds of times before. So it's later ascertained
7 600 Community Drive.

8 "Wouldn't you think, Detective Moran, that a
9 person who goes to this place routinely, it's his
10 customer, would know the address 600 Community Drive?"

11 Now, why is that important?

12 It's important because the same mistake that
13 was mentioned by Sana Awan, that was 400 Community
14 Drive, independent, was made by Mr. Gopaul.

15 Now, why would that be interesting?

16 It's interesting because it's indicative that
17 Detective Shulman told Mr. Gopaul, "This is what you're
18 going to say in your statement. This is what you're
19 going to say," after terrorizing him in that room.
20 "You're going to say it occurred at 400 Community
21 Drive. This is what you're going to say."

22 If it were him freely and voluntarily making
23 that statement -- and he admitted taking her to Nassau
24 County to have some sexual contact with her, on the
25 videotape he admitted that, so why wouldn't he say it

1 was 600 Community Drive?

2 He didn't because he was forced to dance to
3 Shulman's tune. And it's very strong evidence that
4 independent of each other this information, the same
5 mistake, was made by the complainant and Mr. Gopaul.
6 That is one of the pieces of proof to show that
7 Schulman, the enforcer, was putting this information in
8 his head.

9 Now, the discrepancies in time are designed
10 to show you that they had Mr. Gopaul longer than they
11 than they say they did by keeping all this juggling and
12 not making any police officer responsible for the
13 actual arrest. They juggle this around because they
14 had him and they were softening him up.

15 Now, this is America. We try to behave in a
16 lawful manner. You're here as jurors. We rule by law,
17 or we try to, and when we don't rule by law, when our
18 representatives don't behave legally and lawfully, they
19 get prosecuted, some of the time, or maybe most of the
20 time.

21 But we're ruled by law and we're not ruled by
22 emotion.

23 What Mr. Gopaul said to you on that videotape
24 was not nice. As a matter of fact, it was
25 reprehensible. I'll say that straight out. No man

1 should have behaved as he said he behaved, no man, and
2 I could understand being upset or angry at what he said
3 on that videotape.

4 That's a far different cry from somebody
5 forcefully, at knifepoint, sexually abusing a
6 stepdaughter. Despite everything, he denied that he
7 ever used any force on Sana Awan and I'm going to get
8 to Sana a little bit later.

9 And, very important, is the fact that when he
10 came to the precinct he did not know, obviously, he was
11 going to get arrested so he came to the precinct and he
12 left his car out front and came into the precinct so
13 when the car was searched, presumably what Sana said
14 was in the car should have been in the car and one of
15 the items she knew was in the car because she had been
16 with him at least ten times. He's had that thing in
17 the car and she told Detective Moran it was always in
18 the car.

19 Now, I believe the District Attorney is going
20 to try to argue to you that when she was talking about
21 always she was only referring to May and June because
22 that was what Detective Moran was talking to her about.

23 You don't use the term always if it's May and
24 June. Detective Moran didn't say, "In May and June
25 were those in the car?"

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1 The answer would have been yes.

2 No, she says that knife was always in the
3 car. So she knew that knife was in the car beforehand
4 and that was there, so it's not as if she didn't know
5 it was there.

6 Taking what was said on that videotape,
7 Mr. Gopaul told you that he had some kind of sexual
8 relationship with Sana Awan, his stepdaughter. I admit
9 to you that's disgusting, reprehensible, but despite
10 everything, denied force.

11 Now, was it appropriate?

12 Absolutely not.

13 Was it something that any respectful person
14 would do?

15 No.

16 So does that mean that because on the
17 videotape he said this, that he did it with force?

18 No, he told you he did not.

19 And, what does Sana Awan say?

20 Sana Awan was a very, very attractive young
21 lady, very, very, smart lady, very nice, very good
22 witness, but Sana Awan periodically did give herself
23 away.

24 Now, what do I mean by that?

25 Sana Awan tells us this story that she was

1 forced at knifepoint to commit these acts against my
2 client.

3 District Attorney asked her on direct
4 examination about some incident that occurred in 2005
5 and whether she was, basically, terrorized continually
6 because of Mr. Gopaul's actions from 2005 and Sana
7 said, "Yes, I've been terrified."

8 Now, if you remember, I introduced -- I
9 offered and the Judge permitted into evidence Sana's
10 grades from the time she was 14, when this supposedly
11 started, until she graduated.

12 She started with B plus grades and ended with
13 A to A minus grades. It's phenomenal. A girl is
14 living at home, terrorized by her stepfather,
15 terrorized, her own words, and she's got A, A minus, B
16 plus grades. Never absent from school, not a
17 behavioral problem in school. But she's an A student.

18 Wouldn't you expect someone living in an
19 atmosphere where she's terrorized by the person who's
20 in that place, sees him every day, drives her to
21 school, takes her home from school, how could that
22 person in any way possibly concentrate on her grades?

23 How could anyone under those circumstances
24 concentrate on her grades?

25 She did. It's a testament to her that she

1 was able to get As and Bs. Sana is a smart young lady.

2 Additionally, she would frequently, her, not
3 Mrs. Gopaul, not the children, and not Mr. Gopaul, she
4 took pictures of him. She took videos of him. She was
5 there wanting to be with him.

6 Now, you saw the Father's Day card. Father's
7 Day card was right after, right after, she says many or
8 some of these things happened.

9 MS. JOHNSON: Objection.

10 THE COURT: Overruled.

11 MR. SCHECHTER: Father's Day card. She gave
12 him a Father's Day card with her on it dressed in a
13 shirt, interesting shirt, and I don't know what those
14 are, shorts or something, and two kids, the two other
15 kids. They got spray cans and it's a Father's Day car.
16 Love, Sana. Love, Sana. She gave him a Father's Day
17 card. Didn't force her to give the Father's Day card,
18 had no input in giving him the father's day card, but
19 she gave him a Father's Day card.

20 Why, then, would Sana, in this situation, in
21 this atmosphere, blame Mr. Gopaul, saying Mr. Gopaul
22 threatened her with a knife to have sex with her and
23 that's the reason.

24 He went too far, "I want to have sex with
25 you," said it on the videotape, "I want to be the

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1 first." Disgusting, disgusting.

2 You promised me you're not going to judge by
3 morals, you're not going judge to judge with your
4 personal taste and personal positions about what is
5 distasteful, judging on the evidence.

6 Sana did not want that and she has a
7 boyfriend. She has to save some face here, she doesn't
8 want to let her business out, so she tells her friend,
9 "Get me out of here. He wants to have sex with me.
10 I'm out of here," and she left.

11 Why did she bring these charges?

12 Why did she claim that her stepfather
13 threatened her with a knife?

14 She claimed that because she was trying to
15 find a face-saving device to account for her actions
16 with Mr. Gopaul. As inappropriate as they were, they
17 don't rise to the violence that was alleged against
18 him.

19 How do we know, what is the indication, that
20 this was not a violent-driven situation?

21 Sana tells us herself she didn't tell the
22 school, she didn't tell the police - now, this was over
23 a four-year period - didn't tell the police, tell
24 school, tell friends, tell boyfriend, four years.

25 He's not there all the time. She's in

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1 school. She could have told the guidance counselor.
2 It would have had to have been reported once she says
3 it.

4 She says, "I was afraid I would break up my
5 parents' marriage," not that she was scared to death.
6 "I was afraid to break up my parents' marriage."

7 You break up your parents' marriage because
8 of the threat?

9 No.

10 Because you had improper contact with her
11 husband, her stepfather.

12 "I didn't want to break up the marriage and I
13 didn't want to have my family not supported."

14 It's noble. That's the reason. That's the
15 reason why she didn't bring the charges. That's what
16 she was thinking about, not that she was threatened,
17 not that she was under duress, not that she was under
18 this kind of compulsion. She was thinking she did not
19 want to break up her parent's family because she wanted
20 to have her mother supported. That's why she did not
21 do it for four years. That was the fear that she had.
22 The fear was not that Mr. Gopaul threatened her or
23 menaced her, the fear was breaking up the family.

24 All of these things came from the testimony.
25 I am not telling you anything you didn't hear in court.

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1 What I'm asking you to do, I'm asking you to
2 review this evidence. My client, Mr. Gopaul, is
3 entitled to the benefit of every reasonable doubt. He
4 is entitled to that because it's impossible to prove
5 the negative. He is entitled to the benefit of every
6 reasonable doubt and if you have a reasonable doubt, as
7 you promised to do, you will please find him not guilty
8 of what he is charged with.

9 You'll be charged by the Judge at the end of
10 the case, okay. Mr. Gopaul is not being charged with
11 having sex with a minor. That's not what he's charged
12 with. A 17-year-old girl -- 17 is the age of consent.
13 He's not charged with having sex with a minor, he's
14 charged with forcibly having sexually -- allegedly
15 sexually abusing Sana, that's what he's charged with,
16 not statutory.

17 Sana also said that neither her father nor
18 her mother objected to her having a boyfriend. Seems
19 to me if someone wanted to truly be the first and was
20 coercive he wouldn't want her to have a boyfriend, but
21 she said no, they never objected.

22 Now, please don't let your distaste for this
23 subject matter and what you heard substitute for your
24 careful, objective, legal analysis in this case.
25 Please analyze the evidence and listen to the Judge's

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1 charge and if you believe after you hear all the
2 evidence you have a reasonable doubt, please vote for
3 my client's acquittal here.

4 Now, after I sit down Ms. Johnson is going to
5 be coming after me, she's going to be speaking to you.
6 I'll not have the opportunity to answer her arguments
7 to you. I'll not be able to say, "Wait a minute, but
8 you forgot this, forgot that."

9 She has, therefore, an advantage and the
10 reason she has an advantage is because the law gives
11 her the advantage because she has the burden of proof,
12 but I would ask that you all think about what I would
13 have said to answer Ms. Johnson's arguments and then
14 make a decision as to what happened here.

15 Thank you.

16 THE COURT: All right, thank you,
17 Mr. Schechter.

18 All right, members of the jury, we're going
19 to take a very brief recess, take care of whatever
20 business you need to. We're going to have the DA's
21 summation. More than likely I'll try to follow that up
22 with my charge immediately thereafter. Just follow
23 Kenny outside and we'll have you back in a few minutes.

24 (Jury exits.)

25 MR. SCHECHTER: Your Honor, I need to be

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1 heard for the record.

2 THE COURT: Sure.

3 MR. SCHECHTER: I had not raised this for the
4 record because the Court had made a determination
5 inside.

6 I just want the record to reflect
7 Mr. Rosenblatt, the ADA in Queens, is here and he was a
8 witness on the video they are going to see.

9 It's extremely prejudicial to my client.
10 It's like having an unsworn witness in the courtroom
11 who is on the videotape present during the testimony.

12 Additionally, Mr. Rosenblatt might be a
13 witness in the case in Queens. He knows that and, as
14 such, his presence here is not proper because, as a
15 witness, he was -- he should have been excluded and I
16 had asked the Court in camera -- in chambers for that
17 and the Court had denied my application.

18 I just wanted that to be made known for the
19 record.

20 THE COURT: Right. And I would also point
21 out, number one, Mr. Rosenblatt was not a witness in
22 this matter and therefore, as my courtroom is open, I
23 think he's, if he wishes, he's entitled to be here.

24 Secondly, I doubt very highly, Mr. Schechter,
25 that the jury is recognizing Mr. Rosenblatt sitting in

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1 the back of the courtroom. Quite frankly, I don't even
2 know who Mr. Rosenblatt is from scanning the back of
3 the courtroom at this time based upon what I saw in the
4 video, so, I don't think it's prejudicial to your
5 client, I don't think it's improper and -- but you have
6 your exception for the record.

7 MR. SCHECHTER: Thank you, Judge.

8 MS. JOHNSON: Ten minutes?

9 THE COURT: Yeah.

10 (Recess in the proceedings.)

11 THE COURT: All right, while the jury is out
12 and before the People begin their summation, during the
13 break, after your summation, Mr. Schechter, we did some
14 further research.

15 It does appear that there is a CJI charge for
16 sex abuse third in brackets. I think it says no
17 acquiescence. I brought both of you back to my
18 chambers. I showed it to both of you.

19 If you had asked for it, Mr. Schechter, I
20 would be inclined to give it as a lesser included
21 offense with respect to the 14 counts that charge sex
22 abuse in the first degree.

23 I also indicated to you that in light of the
24 fact that you had finished your summation a moment ago
25 I would certainly, in light of my decision to give the

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1 lesser included, allow you to reopen your summation and
2 comment to the jury about it, if you wish.

3 So I assume at this point you're asking for
4 the charge?

5 MR. SCHECHTER: Your Honor, I do respectfully
6 ask for the charge and my summation, in my opinion,
7 based upon my view of the case and my view of the
8 evidence, basically encompassed that any way.

9 I therefore find it will not profit my client
10 for me to reopen my summation and therefore I would
11 choose to leave my summation as is.

12 THE COURT: Okay, then we'll do that.

13 All right, Ms. Johnson, you're ready to
14 proceed at this point?

15 MS. JOHNSON: I am, Judge.

16 THE COURT: All right.

17 (Jury enters.)

18 THE COURT: All right, members of the jury,
19 welcome back.

20 At this time we're going to hear from the
21 People.

22 Ms. Johnson, if you would?

23 MS. JOHNSON: Thank you, Judge.

24 Where there's a victim who never once wavered
25 in telling you what he did to her, never to the police,

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1 never to the prosecution, never to you, the jury, when
2 there is a knife recovered in the very same place in
3 the very same van that the victim told the police they
4 would find it, when there's a written statement in the
5 defendant's own handwriting, in his own words, about
6 how he sexually abused the little girl he raised since
7 the time she was three years old and when there is a
8 video confession in his words telling you what
9 attracted him to the growing body and the developing
10 breasts of his stepdaughter, when you have all that,
11 when you have all that, when you have overwhelming
12 evidence beyond a reasonable doubt that the defendant
13 is guilty of each and every crime charged, that when
14 you have that overwhelming evidence that beyond a
15 reasonable doubt the defendant, Harold Gopaul, forcibly
16 touched the breasts and vagina of the little girl he
17 raised, Sana Awan, in our county, in May and June 2008,
18 when you have all that you blame the police.

19 I submit to you, ladies and gentlemen, that
20 the evidence has proven to you beyond a reasonable
21 doubt that in May and June of 2008 in Nassau County
22 Harold Gopaul forcibly touched the breasts and the
23 vagina of then 17-year-old Sana Awan.

24 I submit to you that each and every time she
25 told him no, but that wasn't good enough for this

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1 stepfather and I submit to you the evidence has proven
2 to you beyond a reasonable doubt that he made the
3 choice to escalate his force when she became resistant
4 and tried to push and pull away from him, he made the
5 choice to introduce this weapon to 17-year-old Sana.

6 There should be no question in your minds,
7 based on Sana's testimony, based on Christine, Denise
8 Alioto, based on Detective Shulman and based on Officer
9 Alfaro, based on his video confession, there should be
10 no question in your mind that he touched Sana Awan's
11 breasts and vagina in May and June of 2008.

12 So the real question for you, ladies and
13 gentlemen, is whether or not this defendant did it by
14 force, as the Judge will instruct you what that word
15 means in our law.

16 The answer to you, ladies and gentlemen, the
17 answer -- the only answer consistent with the evidence
18 in this case is that, yes, through his threats, both
19 expressed and implied, and through this knife, and
20 through his power, his strength, his body, yes, this
21 defendant forcibly touched Sana Awan 's breasts and
22 vagina.

23 I'm going to take some time now to go through
24 the evidence and each date that you're going to be
25 asked to consider and we're going to go through why it

Summation - People

817

1 is that the evidence has proven to you beyond a
2 reasonable doubt not just the touching, but the force.

3 Sana told you that between May 1st and 13th,
4 2008 this defendant drove her out to Community Drive in
5 Nassau County in his Ecolab van and she told you how he
6 asked her to lean into him and he began to kiss her and
7 as she clenched her lips and tried to push him away and
8 physically resist him with her tiny frame he didn't
9 stop. She told you how he wouldn't stop and he forced
10 his tongue into her mouth, kissing his stepdaughter.

11 And she told you how it still didn't stop
12 because as she turned her head and tried to push his
13 body away from hers he touched her breasts and he
14 touched her vagina and I submit to you, ladies and
15 gentlemen, that his body, his frame against hers, his
16 authority, his strength and his power, I submit to you
17 that was the very force that he used upon Sana when she
18 said no.

19 And she told you how he was bigger than her
20 and stronger than her and she told you how she relied
21 and trusted this man who raised her and she told you
22 how she wasn't able to fight him, how she couldn't push
23 him away, as hard as she tried, and despite that,
24 despite tiny frame trying to push him and pull him away
25 his body overpowered her.

Summation - People

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1 I submit to you, ladies and gentlemen, that
2 that is your physical force.

3 But it didn't stop because Sana told you that
4 after he touched her breasts, after he put his hand on
5 her vagina and told her how wet she was she still tried
6 to push him away, but, again, the power of his body
7 over hers, that physical force, she couldn't fight off.
8 I submit to you that is physical force.

9 But for that time frame of May 1st to May
10 13th, 2008, ladies and gentlemen, you don't just have
11 to rely on that power and that strength that he exerted
12 upon her because she told you that between that time
13 frame his violence escalated and he made the choice to
14 take this knife recovered in his van and threaten her
15 and he took this knife -- he made the choice to take
16 her finger, point this blade at her and tell her, "I'm
17 going to show you how serious I am."

18 Those words, with that knife, members of the
19 jury, that threat, that is forcible compulsion, I
20 submit to you.

21 But Sana told you May 1st through the 13th
22 wasn't the end.

23 Today is May 14th, 2009. It was a year ago
24 today, May 14th, 2008 that, again, he drove her out
25 from his home in Queens -- at her school in Queens to

Summation - People

819

1 our county in that same van and he brought her out here
2 again to touch her breasts and to touch her vagina and
3 still she fought, still she said no and no different
4 than in May 1st through 13th than was May 14th. He was
5 still bigger and stronger than her and, again, despite
6 her pushing and pulling and covering her body from the
7 defendant he didn't stop and he chose to use his power,
8 his strength, his size and that very trust that she
9 relied upon to continue the abuse.

10 And it was that very day that you heard from
11 Sana's mouth that a promise was made, a promise that he
12 was going to be the one, a promise that he, I submit to
13 you, planned on keeping, that he was going to be the
14 one for his stepdaughter to lose her virginity to. She
15 told you that. He told you that.

16 But on May 14th, 2008 his physical size, his
17 strength, that knife that he had already threatened her
18 with, members of the jury, members of the jury, just
19 one week earlier, I submit to you, that is your
20 forcible compulsion and I submit to you that that
21 physical force proves to you beyond a reasonable doubt
22 that on May 14th, 2008, in that very same van, this
23 defendant forcibly touched Sana's breasts and vagina.

24 Sana then told you about May 19th through the
25 23rd, 2008 and again she tried to overcome his power

Summation - People

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1 and his strength, but through his physical force, his
2 size -- and, make no mistake, we're not looking at a
3 man six foot tall, 300 pounds, but to Sana, who told
4 you she's barely 100 pounds, compared to her he was
5 bigger and stronger than that little girl.

6 And yet again on that date she still said no
7 and she still tried to push him away. She still tried
8 to pull away from him and cover her body, but just like
9 in the beginning of May, no different, he wouldn't take
10 no for an answer and with that power and with that
11 strength he used his physical force to touch her yet
12 again.

13 She told you about June 2nd through the 6th,
14 2008 and, again, he picked her up from school, drove
15 her to Community Drive and continued to sexually abuse
16 her and despite being unable to fight him off before,
17 she didn't stop, she continued to fight him, she
18 continued to say no, she continued to push away, she
19 continued to pull away, she continued to use both hands
20 to push his body off of her, but, again, she wasn't
21 successful because his physical force, the size
22 compared to her, his strength and his power overcame
23 her tiny frame and, ladies and gentlemen, that is
24 physical force and forcible compulsion as the Court
25 will instruct you.

Summation - People

821

1 On June 2nd through 6th Sana told you what
2 her fear was. She told you again he threatened her and
3 she told you again she feared that he was going to kill
4 her if she didn't comply and I submit to you, ladies
5 and gentlemen, her fear was reasonable in her teenage
6 mind because it was only weeks earlier that his threat
7 escalated and I submit to you her fear was reasonable
8 because it was only week earlier that he took this
9 blade and told her in no uncertain terms, "I'm going to
10 show you how serious I am."

11 And it was on June 2nd through the 6th of
12 2008 that not only his physical force was used to
13 forcibly compel Sana into heeding to his demands, but
14 that threat as well and that knife, I submit to you,
15 that was the forcible compulsion used on that date.

16 June 9th through the 13th, again, it didn't
17 stop. She told you he kept bringing her out to Nassau
18 County, kept touching her breasts, and kept touching
19 her vagina and she told you that still she feared that
20 he would kill her because she saw this knife in the van
21 yet again and I submit to you it's because he
22 threatened her before and because he told her before
23 how serious he was, that the evidence has proven to you
24 beyond a reasonable doubt on those dates he used
25 forcible compulsion to touch her breasts and her

1 vagina.

2 You heard about June 19th to the 20th, no
3 different, no different than May, no different than the
4 beginning of June; again he brought her out to Nassau
5 County, again he touched her and again she resisted and
6 again she said no and again she used her hands, tried
7 to push him away, tried to push him off her and tried
8 to cover her body but, yet again, he didn't stop.

9 Again, his body overpowered her and this same
10 man who had threatened her twice before, she told you
11 still she couldn't fight him off.

12 But, members of the jury, Sana's testimony, I
13 submit to you, standing alone is your proof beyond a
14 reasonable doubt, but I tell you, you don't just have
15 to rely on what she told you.

16 But I ask you, ladies and gentlemen, use your
17 common sense and I submit to you that you know she was
18 being truthful to you and you know you can credit her
19 testimony as worthy of your belief.

20 We talked about on jury selection what it is,
21 what types of skills we use in our everyday lives to
22 tell us whether or not somebody is being honest and
23 truthful with us and those factors we talked about on
24 jury selection were present in this courtroom when she
25 took that witness stand.

Summation - People

823

1 Many of you agreed that a witness' demeanor
2 is something you look at and consider when determining
3 if somebody is being honest and truthful with you.

4 You saw Sana on that witness stand, soft
5 spoken, both to myself and both to defense attorney.
6 You saw her break down when she described not just the
7 abuse she suffered at the hands of her stepfather, but
8 you saw her break down when she talked about her
9 brother and her sister.

10 Despite those horrific details that she
11 described to you about how he touched her, she never
12 hesitated and she admitted that she loved him, she
13 loved her stepfather, never hesitated.

14 And as difficult as that may seem for many of
15 you to understand and as complicated as that is, I tell
16 you it is that very brutal honesty that tells you who
17 the true Sana Awan is and it is that very brutal
18 honesty that I submit to you tells you that she is
19 worthy of your belief and that her testimony should be
20 credited as truthful and honest when she told you what
21 he did to her.

22 We talked about consistency in a witness's
23 testimony on jury selection.

24 How interesting. Sana never wavered, not
25 once, in who touched her, when he touched her, where he

Summation - People

824

1 touched her, how he touched her, not once.

2 Maybe she didn't know times, maybe she didn't
3 know exact dates, maybe she didn't know who was in the
4 car on some date in 2008, but, ladies and gentlemen,
5 what she never wavered in, I submit to you, is what
6 matters to you, the jury.

7 Defense counsel stood up here and told you
8 and argued to you that Sana didn't report the sexual
9 abuse to her teacher, to her guidance counselor, to her
10 principal or to her friends right away, didn't report
11 it to her family.

12 That's true. And she told you why.

13 We talked on jury selection about the reasons
14 that a victim, especially of sexual abuse, may not feel
15 comfortable and may feel humiliated and embarrassed
16 talking about personal and horrific things that they've
17 been through.

18 Sana told you from that witness stand that
19 she didn't feel like she could confide in her mother,
20 her teacher, her guidance counselor and it should come
21 as no surprise to you, members of the jury, why.

22 It should come as no surprise to you that she
23 felt she couldn't confide in her mother, the very same
24 woman who, when she brought Sana home from the
25 precinct, had the defendant's entire family waiting in

Summation - People

825

1 the home, the very same woman who never consoled her
2 daughter about what happened to her and the very same
3 woman who never even asked her if she was okay.

4 But in her mind, in Sana's mind, in her
5 teenage mind, she did what she thought was reasonable
6 and I submit to you what any teenage girl would have
7 done, she confided in her best friend.

8 But, members of the jury, it's not just who
9 she confided in it's when she confided in that tells
10 you she was being truthful and honest with you and
11 worthy of your belief.

12 Sana told you why she picked June 23rd, 2008
13 to confide in her best friend Christine. It was
14 because days later she was going to have to fulfill the
15 promise he told her, the promise that he was going to
16 have her keep, that 17-year-old virgin Sana Awan was
17 going to lose her virginity to her stepfather and she
18 told you why she couldn't wait until the day before and
19 how she waited until the very moment that her mother
20 was asleep, her brother and sister were asleep and the
21 defendant wasn't home and she even told you she waited
22 until the air conditionings were on in her home so
23 nobody would hear her and see her leave, knowing she
24 couldn't wait until the day before in case she couldn't
25 get out.

Summation - People

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1 Smart girl, I tell you, gave herself time and
2 took that bag she had packed days earlier in her closet
3 and ran and called her best friend and finally confided
4 and disclosed the humiliation and embarrassment she had
5 been suffering by him for so long.

6 But it's not just her demeanor and it's not
7 just no inconsistency in her testimony and not just
8 when and where and who she out cried, but Sana's
9 testimony was corroborated by not just other testimony
10 you heard, but the physical evidence that was presented
11 to you in this case, ladies and gentlemen.

12 Officer Alfaro told you that she recovered
13 this knife from the defendant's Ecolab van parked
14 outside of the 105th Precinct on June 24th, 2008,
15 recovered in the very same spot, the very same van, the
16 very same place.

17 But, how interesting, Sana and
18 Detective Shulman told you -- Sana told you she told
19 Detective Shulman about the knife, not knowing the
20 defendant was even at the police precinct, not knowing
21 he had even walked through those doors and parked his
22 van outside, this knife recovered in exactly the same
23 spot in exactly the same place in exactly the same van
24 where she told Detective Shulman it would be before
25 even knowing that he walked through those precinct

1 doors.

2 Defense counsel argued to you that this was a
3 consensual relationship, that Sana Awan, the girl who
4 came into this courtroom and took that witness stand,
5 was having an affair with him?

6 That 17-year-old girl was having a consensual
7 sexual affair with the man who raised her since the
8 time she was three years old, her mother's husband, the
9 father to her brother and her sister.

10 I submit to you, members of the jury, you use
11 your common sense.

12 Does it sound ridiculous, because I submit to
13 you it is, that that girl was having an affair with
14 him?

15 But you don't even have to take her word for
16 it because he told you himself. If there was any doubt
17 in your mind, any doubt that this was a consensual
18 affair, his own words told you it was not. I
19 am not going to play this video for you now, but I
20 encourage you when you go back to deliberate you can
21 ask the Court to see any of the evidence, all of the
22 evidence, again.

23 He told you and you saw him say that she said
24 no, his words. He told you that he had to convince her
25 to let him touch her. He told you how he convinced

1 Sana to let him touch her. He told you -- he told you
2 this back in June 2008. He told you that he told Sana
3 to keep it a secret and that he told her it's okay and
4 that he started the relationship and he told you in
5 disgusting detail, I submit to you, ladies and
6 gentlemen, what it was about; her growing breasts and
7 her growing body that sexually attracted him to his
8 stepdaughter.

9 Those words, out of his mouth, "I'm sorry I
10 started it."

11 She said no.

12 Does that sound like a consensual affair,
13 ladies and gentlemen?

14 Your common sense tells you it sounds
15 ridiculous because it is ridiculous.

16 If you believe that Sana Awan was having an
17 affair with her stepfather, as defense counsel would
18 have you believe, then you must also believe that she
19 lied to you from that witness stand when she told you
20 about the knife, about the force, and about the threats
21 and you know, members of the jury, that she had no
22 reason to lie. She had no motive.

23 What motive does Sana Awan have to walk into
24 this courtroom and divulge humiliating, embarrassing,
25 disgusting details about what her stepfather did to

Summation - People

829

1 her?

2 Do you think that was fun for her?

3 You saw her. No motive.

4 You've heard testimony, you've seen the
5 physical evidence, you've seen his own words, you've
6 seen him on video.

7 Members of the jury, I submit to you that
8 there is only one verdict consistent with all the
9 evidence in this case. Tell this defendant what he
10 told you on that video back in June of 2008, tell him
11 what he already told you. Tell him what he admitted on
12 that videotaped confession, that he is guilty of each
13 and every crime charged. Tell him that with your
14 verdict. Thank you.

15 THE COURT: All right, Ms. Johnson, thank you
16 very much.

17 All right, members of the jury, my charge is
18 going to be a little longer than usual. I want you all
19 to be comfortable. It's very important you pay
20 attention to my charge. I'm going to have you excused
21 very briefly.

22 Please don't discuss this case even though
23 the attorneys are done with their summations.

24 I'm going to have you back here probably
25 within five minutes and we'll begin my charge. So, if

Jury Charge

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1 you would, just follow Kenny and we'll have you back
2 here real quick.

3 (Jury exits.)

4 (Brief recess in the proceedings.)

5 THE COURT: Mr. Schechter, before I give the
6 verdict sheet to the jury I'm just going to call both
7 of you up here just before they go out with it. We're
8 just making some finishing touches on it in light of
9 the changes.

10 (Jury enters.)

11 THE CLERK: Okay, the Court is about to
12 charge the jury. Anyone wishing to leave may do so
13 now. No one will be permitted to enter or leave during
14 the charge of the Court.

15 THE COURT: All right, members of the jury,
16 at this point it becomes my privilege to charge you on
17 the law.

18 What you will find is that my charge is
19 basically broken up into three major components.

20 The first will be certain principles that
21 apply -- of law that apply in every criminal case.
22 There are certain principles of law that I will charge
23 you that are specific to some of the issues that have
24 been raised during the course of my trial -- during the
25 course of this trial, I should say.

Jury Charge

831

1 The second part of the charge will then deal
2 with the actual charges themselves. I'll define the
3 charges and the elements of the charge and.

4 Then, finally, I'll then get into
5 deliberations and how you're to proceed with regard to
6 your deliberations.

7 So that's basically an outline of what my
8 charge will be.

9 So during these instructions, members of the
10 jury, I will not summarize the evidence. If necessary,
11 I may refer to portions of the evidence to explain the
12 law as it relates to it. My reference to evidence or
13 my failure to refer to evidence expresses no opinion
14 about the truthfulness, accuracy or importance of any
15 particular evidence.

16 In fact, nothing I have said and no questions
17 I have asked in the course of this trial were meant to
18 suggest that I have an opinion about this case, a
19 witness, the evidence, or whether the defendant is
20 guilty or not guilty.

21 If you have formed an impression that I do
22 have such an opinion you must put it out of your mind
23 and disregard it.

24 The level of my voice or intonation may vary
25 during these instructions. If I do that it is done to

Jury Charge

832

1 help you understand these instructions. It is not done
2 to communicate any opinion about the law or the facts
3 of the case or whether the defendant is guilty or not
4 guilty.

5 Remember, it is not my responsibility to
6 judge the evidence here, it is yours. You and you
7 alone are the judges of the facts and you and you alone
8 are responsible for deciding whether the defendant is
9 guilty or not guilty.

10 In your deliberations you may not consider or
11 speculate about matters relating to sentence or
12 punishment. If there is a verdict of guilty it will be
13 my responsibility to impose an appropriate sentence.

14 When you judge the facts you are to consider
15 only the evidence. The evidence in the case includes
16 the testimony of the witnesses, the exhibits that were
17 received in evidence and the stipulation by the
18 parties.

19 Testimony which was stricken from the record
20 or to which an objection was sustained must be
21 disregarded by you.

22 Exhibits that were received in evidence are
23 available upon your request for your inspection and
24 consideration. Exhibits that were just seen during the
25 trial or marked for identification but not received in

Jury Charge

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1 evidence are not evidence and thus are not available
2 for your inspection and consideration, but testimony
3 based on exhibits that were not received in evidence
4 may be considered by you, it's just that the exhibit
5 itself is not available for your inspection and
6 consideration.

7 The charges in this case are set forth in a
8 document that's known as an indictment. The indictment
9 simply states the charges. Neither the indictment
10 itself nor the fact that an indictment has been filed
11 constitutes evidence.

12 The defendant has pleaded not guilty to the
13 charges contained in the indictment and the trial is to
14 decide whether the defendant is guilty or not guilty.

15 In evaluating the evidence you may consider
16 any fact that is proven and any inference which may be
17 drawn naturally, reasonably and logically from such
18 fact. To draw an inference means to infer, find,
19 conclude, that a fact exists or does not exist based
20 upon proof of some other fact or facts.

21 For example, if you go to bed one night when
22 it is not raining, when you wake up in the morning you
23 look out your window you do not see rain, but you see
24 that the street and sidewalk are wet and that people
25 are wearing rain coats and carrying umbrellas.

Jury Charge

834

1 Under those circumstances it may be
2 reasonable to infer, conclude, that it had rained
3 during the night.

4 In other words, the fact of rain during the
5 night is an inference that might be drawn from the
6 proven facts of the presence of water on the street and
7 sidewalk and people in raincoats and carrying
8 umbrellas.

9 An inference must only be drawn from a proven
10 fact or facts and then only if the inference flows
11 naturally, reasonably and logically from the proven
12 fact or facts, not if it is speculative.

13 Therefore, in deciding whether to draw an
14 inference you must look at and consider all the facts
15 in light of reason, common sense and experience.

16 We now turn to the fundamental principles of
17 our law that apply to all criminal trials; the
18 presumption of innocence, the burden of proof and the
19 requirement of proof beyond a reasonable doubt.

20 Throughout these proceedings the defendant is
21 presumed to be innocent.

22 As a result, you must find the defendant not
23 guilty unless on the evidence presented at this trial
24 you conclude that the People have proven the defendant
25 guilty beyond a reasonable doubt.

Jury Charge

835

1 In determining whether the People have
2 satisfied their burden of proving the defendant's guilt
3 beyond a reasonable doubt you may consider all the
4 evidence presented, whether by the People or by the
5 defendant.

6 In doing so, however, remember that even
7 though the defendant introduced evidence, the burden of
8 proof remains on the People.

9 The defendant is not required to prove that
10 he is not guilty. In fact, the defendant is not
11 required to prove or disprove anything.

12 To the contrary, the People have the burden
13 of proving the defendant guilty beyond a reasonable
14 doubt. That means before you can find the defendant
15 guilty of a crime the People must prove beyond a
16 reasonable doubt every element of the crime, including
17 that the defendant is the person who committed that
18 crime.

19 The burden of proof never shifts from the
20 People to the defendant. If the People fail to satisfy
21 their burden of proof you must find the defendant not
22 guilty. If the People satisfy their burden of proof
23 you must find the defendant guilty.

24 What does your law mean when it requires
25 proof of guilt beyond a reasonable doubt?

Jury Charge

836

1 The law uses the term proof beyond a
2 reasonable doubt to tell you how convincing the
3 evidence of guilt must be to permit a verdict of
4 guilty.

5 The law recognizes that in dealing with human
6 affairs there are very few things in this world that we
7 know with absolute certainty. Therefore, the law does
8 not require the People to prove a defendant guilty
9 beyond all possible doubt.

10 On the other hand, it is not sufficient to
11 prove that the defendant is probably guilty. In a
12 criminal case the proof of guilt must be stronger than
13 that and must be beyond a reasonable doubt.

14 A reasonable doubt is an honest doubt of the
15 defendant's guilt for which a reason exists based upon
16 the nature and quality of the evidence. It is an
17 actual doubt, not an imaginary doubt. It is a doubt
18 that a reasonable person acting in a matter of this
19 importance would be likely to entertain because of the
20 evidence presented or because of the lack of convincing
21 evidence.

22 Proof of guilt beyond a reasonable doubt is
23 proof that leaves you so firmly convinced of the
24 defendant's guilt that you have no reasonable doubt of
25 the existence of any element of the crime or of the

Jury Charge

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1 defendant's identity as the person who committed the
2 crime.

3 In determining whether or not the People have
4 proven the defendant's guilt beyond a reasonable doubt
5 you should be guided solely by a full and fair
6 evaluation of the evidence.

7 After carefully evaluating the evidence each
8 of you must decide whether or not that evidence
9 convinces you beyond a reasonable doubt of the
10 defendant's guilt.

11 Whatever your verdict may be it must not rest
12 upon baseless speculations nor may it be influenced in
13 any way by bias, prejudice, sympathy or by a desire to
14 bring an end to your deliberations or to avoid an
15 unpleasant duty.

16 If you are not convinced beyond a reasonable
17 doubt that the defendant is guilty of a charged crime
18 you must find the defendant not guilty of that crime.

19 If you are convinced beyond a reasonable
20 doubt that the defendant is guilty of a charged crime
21 you must find the defendant guilty of that crime.

22 As judges of the facts you alone determine
23 the truthfulness and accuracy of the testimony of each
24 witness. You must decide whether a witness told the
25 truth and was accurate or, instead, testified falsely

Jury Charge

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1 or was mistaken. You must also decide what importance
2 to give to the testimony you accept as truthful and
3 accurate.

4 It is the quality of the testimony that is
5 controlling, not the number of witnesses who testified.

6 If you find that any witness has
7 intentionally testified falsely as to any material fact
8 you may disregard that witness's entire testimony or
9 you may disregard so much of it as you find was
10 untruthful and accept so much of it as you find to have
11 been truthfully and accurately given.

12 There is no particular formula for evaluating
13 the truthfulness and accuracy of another person's
14 statements or testimony. You bring to this process all
15 of your varied life's experiences.

16 In life you frequently decide the
17 truthfulness and accuracy of statements made to you by
18 other people. The same factors used to make those
19 decisions should be used in this case when evaluating
20 the testimony.

21 Some of the factors that you may wish to
22 consider in evaluating the testimony of a witness are
23 as follows:

24 Did the witness have an opportunity to see or
25 hear the events about which he or she testified?

WS

Jury Charge

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1 Did the witness have the ability to recall
2 those events accurately?

3 Was the testimony of the witness plausible
4 and likely to be true or was it implausible and not
5 likely to be true?

6 Was the testimony of the witness consistent
7 or inconsistent with other testimony or evidence in the
8 case?

9 Did the manner in which the witness testify
10 reflect upon the truthfulness of that witness's
11 testimony?

12 To what extent, if any, did the witness's
13 background, training, education or experience affect
14 the believability of that witness's testimony?

15 Did the witness have a bias, hostility, that
16 affected the truthfulness of the witness's testimony?

17 You may consider whether Sana Awan complained
18 of the crime promptly or within a reasonable period of
19 time after its alleged commission. If you find that
20 the complaint was made promptly or within a reasonable
21 time you may consider whether and to what extent, if
22 any, that fact tends to support the believability of
23 the witness's testimony.

24 If you find that the complaint was reasonably
25 delayed -- pardon me, strike that.

Jury Charge

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1 If you find that the complaint was
2 unreasonably delayed you may consider whether and to
3 what extent, if any, that fact tends not to support the
4 believability of the witness's testimony.

5 In determining whether a complaint was made
6 within a reasonable period of time you may consider
7 such circumstances as the complainant's age, past
8 experiences and mental state, whether or not the
9 complainant feared for his or her own safety or the
10 safety of others, whether or not the complainant had
11 the opportunity to make a complaint and any other
12 circumstance that operated to prevent or delay
13 disclosure within a reasonable period of time.

14 You may consider whether a witness had or did
15 not have a motive to lie. If a witness had a motive to
16 lie you may consider whether and to what extent, if
17 any, that motive affected the truthfulness of that
18 witness's testimony.

19 If a witness did not have a motive to lie you
20 may consider that as well in evaluating the witness's
21 truthfulness.

22 You may consider whether a witness has any
23 interest in the outcome of the case or, instead,
24 whether the witness has no such interest. You are not
25 required to reject the testimony of an interested

WS

Jury Charge

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1 witness or to accept the testimony of a witness who has
2 no interest in the outcome of the case.

3 You may, however, consider whether an
4 interest in the outcome or the lack of such interest
5 affected the truthfulness of the witness's testimony.

6 You may consider whether a witness made
7 statements at this trial that are inconsistent with
8 each other.

9 You may also consider whether a witness made
10 previous statements that are inconsistent with his or
11 her testimony at trial.

12 You may consider whether a witness testified
13 to a fact here at trial that the witness omitted to
14 state at a prior time when it would have been
15 reasonable and logical for the witness to have stated
16 the fact.

17 In determining whether it would have been
18 reasonable and logical for the witness to have stated
19 the omitted fact, you may consider whether the
20 witness's attention was called to the matter and
21 whether the witness was specifically asked about it.

22 If a witness has made such inconsistent
23 statements or omissions you may consider whether and to
24 what extent they affected the truthfulness or accuracy
25 of that witness's testimony here at this trial.

Jury Charge

842

1 The contents of a prior inconsistent
2 statement are not offered for the truth of what
3 happened. You may use evidence of a prior inconsistent
4 statement only to evaluate the truthfulness or accuracy
5 of the witness's testimony here at trial.

6 You may consider whether a witness's
7 testimony is consistent with the testimony of other
8 witnesses or whether -- or with other evidence in the
9 case.

10 If there were inconsistencies by or among
11 witnesses you may consider whether they were
12 significant inconsistencies related to important facts
13 or, instead, were the kind of minor inconsistencies
14 that one might expect from multiple witnesses to the
15 same event.

16 The fact that the defendant did not testify
17 is not a factor from which any inference unfavorable to
18 the defendant may be drawn.

19 In this case you have heard testimony of
20 police officers and detectives. The testimony of a
21 witness should not be believed solely and simply
22 because the witness is a police officer or a detective
23 and, at the same time, a witness's testimony should not
24 be disbelieved solely and simply because the witness is
25 a police officer or a detective.

WS

Jury Charge

843

1 In other words, you must not believe or
2 disbelieve a police officer just because he or she is a
3 police officer or a detective. You must evaluate a
4 police officer and detective's testimony the same way
5 you would evaluate the testimony of any other witness.

6 There is evidence in the case that on another
7 occasion the defendant engaged in conduct with Sana
8 Awan in Queens County. You must not conclude or infer
9 from that testimony that the defendant had a propensity
10 or a predisposition to commit any crime.

11 You may consider that testimony only to
12 permit you to evaluate the believability and accuracy
13 of the witness's testimony as it may relate to the
14 elements of forcible compulsion and intent as I shall
15 define that for you at the end of the case.

16 Again, that testimony was not offered and
17 must not be considered by you for the purpose of
18 proving that the defendant had a propensity or
19 predisposition to commit the crimes charged in this
20 case.

21 It was offered as evidence for your
22 consideration on the question of forcible compulsion
23 and intent. If you find the evidence believable and
24 accurate you may consider it for that limited purpose
25 and for no other.

Jury Charge

844

1 I will now discuss the law as it relates to
2 testimony concerning statements of the defendant made
3 to a police officer, detective or Assistant District
4 Attorney.

5 Our law does not require that a statement by
6 a defendant be in any particular form. It may be oral
7 or written or electronically recorded. There is no
8 requirement that a statement be made under oath.

9 There is testimony that while the defendant
10 was in custody he was questioned by the police and/or
11 detectives and made certain oral and written
12 statements. There is also testimony that the defendant
13 made a videotaped statement to an Assistant District
14 Attorney.

15 Under our law, before you may consider any
16 such statement as evidence in the case you must first
17 be convinced that the statement attributed to the
18 defendant was, in fact, made or adopted by him.

19 In determining whether the defendant made or
20 adopted the statement you may apply the tests of
21 believability and accuracy that we have already
22 discussed.

23 Under our law, even if you find that the
24 defendant made a statement you still may not consider
25 it as evidence in the case unless the People have

Jury Charge

845

1 proven beyond a reasonable doubt that the defendant
2 made the statement voluntarily.

3 How do you determine whether the People have
4 proven beyond a reasonable doubt that the defendant
5 made the made a statement voluntarily?

6 Initially, under our law, before a person in
7 custody may be questioned by the police or an Assistant
8 District Attorney that person first must be advised of
9 his rights, second, understand, those rights -- I
10 should say second, understand those rights and, third,
11 must voluntarily waive those rights and agree to speak
12 to the police or an Assistant District Attorney.

13 If any one of those three conditions is not
14 met a statement made in response to questioning is not
15 voluntary and therefore you must not consider it.

16 There is no particular point in time that the
17 police or Assistant District Attorney are required to
18 advise a defendant in custody of his rights so long as
19 they do so before questioning begins.

20 A defendant in custody need be advised only
21 once of the rights, regardless of how many times or to
22 whom the defendant speaks after having been so advised,
23 provided the defendant is in continuous custody from
24 the time he was advised of his rights to the time he
25 was questioned and there is no reason to believe that

ws

Jury Charge

846

1 the defendant had forgotten or no longer understood his
2 rights.

3 While there are no particular words that the
4 police or the Assistant District Attorney are required
5 to use in advising the defendant, in sum and substance
6 the defendant must be advised of the following:

7 One, that he has a right to remain silent,
8 two, that anything he says may be used against him in a
9 court of law, two (sic), that he has the right to
10 consult with a lawyer before answering any questions
11 and the right to the presence of a lawyer during any
12 questions and, four, that if he cannot afford a lawyer
13 one will be provided for him prior to any questioning
14 if he so desires.

15 Before you may consider as evidence a
16 statement made by the defendant in response to
17 questioning you must find beyond a reasonable doubt
18 that the defendant was advised of his rights,
19 understood those rights and voluntarily waived those
20 rights and agreed to speak to the police or detective
21 or an Assistant District Attorney.

22 If you do not make those findings then you
23 must disregard the statement and not consider it.

24 Under our law, a statement is not voluntary
25 if it is obtained from the defendant by the use or

Jury Charge

847

1 threatened use of physical force upon the defendant.

2 In addition, a statement is not voluntary if
3 it is obtained by means of any other improper conduct
4 or undue pressure which impairs the defendant's
5 physical or mental condition to the extent of
6 undermining his ability to make a choice of whether or
7 not to make a statement.

8 In considering whether a defendant was -- in
9 considering whether a statement was obtained by means
10 of any improper conduct or undue pressure which
11 impaired the defendant's physical or mental condition
12 to the extent of undermining his ability to make a
13 choice of whether or not to make a statement you may
14 consider such factors as the defendant's age,
15 intelligence and physical and mental condition and the
16 conduct of the police during their contact with the
17 defendant, including, for example, the number of
18 officers who questioned the defendant, the manner in
19 which the defendant was questioned, the defendant's
20 treatment during the period of detention and
21 questioning and the length of time the defendant was
22 questioned.

23 It is for you to evaluate and weigh the
24 various factors to determine whether, in the end, a
25 statement was obtained by means of any improper conduct

Jury Charge

848

1 or undue pressure which impaired the defendant's
2 physical or mental condition to the extent of
3 undermining his ability to make a choice of whether or
4 not to make a statement.

5 Under our law, when a person is arrested the
6 police must bring him to court for arraignment without
7 unnecessary delay.

8 Before bringing an arrested defendant to
9 court the police may complete the paperwork associated
10 with the processing of the arrest, may question
11 witnesses or conduct other investigation relevant to
12 the case and may question the defendant.

13 It is not for the jury to determine precisely
14 when the defendant should have been arraigned.

15 However, you may consider whether the police
16 unnecessarily delayed the defendant's arraignment and,
17 if so, whether that delay, along with any other
18 relevant factors, affected the defendant's ability to
19 make a choice about whether to make a statement.

20 A statement is not involuntary solely because
21 of the length of time before a defendant is arraigned.
22 That length of time is only one of the factors you may
23 consider in determining whether the statement was
24 voluntary.

25 If the People have not proven beyond a

ws

Jury Charge

849

1 reasonable doubt that a statement of the defendant was
2 voluntarily made, then you must disregard that
3 statement and not consider it.

4 If the People have proven beyond a reasonable
5 doubt that a statement of the defendant was voluntarily
6 made, then you may consider that statement as evidence
7 and evaluate it as you would any other evidence.

8 At this point, members of the jury, I'm going
9 to start to turn towards the actual charges in this
10 case.

11 You're going to notice that I am submitting
12 for your consideration the offense of sex abuse in the
13 third degree, that's under Penal Section 130.55, which
14 was not mentioned at the beginning of this trial.

15 That crime is called a lesser included
16 offense of sex abuse in the first degree, which is
17 Penal Law Section 130.65, Subdivision 1.

18 As a result, our law requires the jury --
19 requires that the jury consider sexual abuse in the
20 first degree and sex abuse in the third degree as
21 follows:

22 You can find the defendant not guilty of both
23 charges or guilty of one of the two charges.

24 Thus, you will consider sex abuse in the
25 first degree and render a verdict of guilty or not

Jury Charge

850

1 guilty. If your verdict is guilty then you will not
2 consider sex abuse in the third degree. If your
3 verdict is not guilty, then you will consider sexual
4 abuse in the third degree and render your verdict
5 according to that charge.

6 And there is a jury verdict sheet that I will
7 give you that will outline, in essence, what I refer to
8 here.

9 The first count is sexual abuse in the first
10 degree.

11 Under our law, a person is guilty of sexual
12 abuse in the first degree when he or she subjects
13 another person to sexual contact by forcible
14 compulsion.

15 Under our law, it is also an element of this
16 offense that the sexual act was committed without
17 consent.

18 Sexual contact takes place without a person's
19 consent when the lack of consent results from forcible
20 compulsion.

21 Some of the terms used in this definition
22 have their own special meaning in our law. I will now
23 give you the meaning of the follow terms: Sexual
24 contact without a person's consent and forcible
25 compulsion.

Jury Charge

851

1 Sexual contact means any touching of a sexual
2 or other intimate parts of a person for the purpose of
3 gratifying the sexual desire of either party. It
4 includes the touching of the actor by that person as
5 well as the touching of that person by the actor,
6 whether directly or through clothing.

7 Forcible compulsion means to intentionally
8 compel either, one, by the use of physical force, or,
9 two, by a threat, expressed or implied, which places a
10 person in fear of immediate death or physical injury to
11 himself or herself.

12 In order for you to find the defendant guilty
13 of this crime the People are required to prove from all
14 the evidence in the case beyond a reasonable doubt both
15 of the following two elements:

16 One, that on or about May 1st, 2008, through
17 May 13th, 2008, in the County of Nassau, the defendant,
18 Harold Gopaul, subjected Sana Awan to sexual contact
19 and, two, that the defendant did so without Sana Awan's
20 consent by use of forcible compulsion.

21 Therefore, if you find that the People have
22 proven beyond a reasonable doubt both of those elements
23 you must find the defendant guilty of the crime of
24 sexual abuse in the first degree as charged in the
25 first count.

Jury Charge

852

1 On the other hand, if you find that the that
2 the People have not proven beyond a reasonable doubt
3 either one or both of those elements, you must find the
4 defendant not guilty of the crime of sexual abuse in
5 the first degree as charged in the first count.

6 I'm now going to turn to now the lesser
7 included offense of sexual abuse in the third degree as
8 it applies to count one and you'll see throughout
9 there's 14 counts of sexual abuse in the first degree,
10 each one of those counts will then have its own lesser
11 included offense which is sexual abuse in the third
12 degree.

13 I'm now going to give you the meaning and
14 define the terms of sexual abuse in the third degree as
15 the lesser included of sexual abuse in the first degree
16 as it pertains to the first count.

17 The second count of sexual abuse in the third
18 degree.

19 Under our law, a person is guilty of sexual
20 abuse in the third degree when he or she subjects
21 another person to sexual contact without that person's
22 consent.

23 Some of the terms used in this definition
24 have their own special meaning in our law. I will now
25 give you the meaning of the following terms: Sexual

Jury Charge

853

1 contact and without a person's consent.

2 Sexual contact means any touching of a sexual
3 or other intimate parts of a person not married to the
4 actor for purposes of gratifying the sexual desire by
5 the party. It includes the touching of the actor by
6 that person as well as the touching of that person by
7 the actor, whether directly or through clothing.

8 Sexual contact takes place without a person's
9 consent when it results from any circumstances in which
10 a person does not expressly or impliedly acquiesce in
11 the actor's conduct.

12 In order for you to find the defendant guilty
13 of this crime the People are required to prove from all
14 the evidence in the case beyond a reasonable doubt both
15 of the following two elements:

16 One, that on or about May 1st, 2008 through
17 May 13th, 2008, in the County of Nassau, the defendant,
18 Harold Gopaul, subjected Sana Awan to sexual contact
19 and, two, that the defendant did so without the consent
20 of Sana Awan in that she did not expressly or impliedly
21 acquiesce to the defendant's conduct.

22 Therefore, if you find that the People have
23 proven beyond a reasonable doubt both of those elements
24 you must find the defendant guilty of the crime of
25 sexual abuse in the third degree as charged in the

Jury Charge

854

1 second count.

2 On the other hand, if you find that the
3 People have not proven beyond a reasonable doubt either
4 one or both of those elements you must find the
5 defendant not guilty of the crime of sexual abuse in
6 the third degree as charged in the second count.

7 Turning to the third count, again, sexual
8 abuse in the first degree.

9 Under our law a person is guilty of sexual
10 abuse in the first degree when he or she subjects
11 another person to sexual contact by forcible
12 compulsion.

13 Under our law it is also an element of this
14 offense that the sexual act was committed without
15 consent.

16 Sexual contact takes place without a person's
17 consent when the lack of consent results from forcible
18 compulsion.

19 Some of the terms used in that definition
20 have their own special meaning in our law. I will now
21 give you the meaning of the following terms: Sexual
22 contact without a person's consent and forcible
23 compulsion.

24 Sexual contact means any touching of sexual
25 or other intimate parts of a person for the purpose of

Jury Charge

855

1 gratifying the sexual desire of either party. It
2 includes the touching of the actor by that person as
3 well as the touching of that person by the actor,
4 whether directly or through clothing.

5 Forcible compulsion means to intentionally
6 compel either, one, by the use of physical force, or,
7 two, by a threat, expressed or implied, which places a
8 person in fear of immediate death or physical injury to
9 himself or herself.

10 In order for you to find the defendant guilty
11 of this crime the People are required to prove from all
12 the evidence in the case beyond a reasonable doubt both
13 of the following two elements:

14 One, that on or about May 1st, 2008, through
15 May 13th, 2008, in the County of Nassau, the defendant,
16 Harold Gopaul, subjected an Sana Awan to sexual contact
17 and, two, that the defendant did so without Sana Awan's
18 consent by use of forcible compulsion.

19 Therefore, if you find that the People have
20 proven beyond a reasonable doubt both of those elements
21 you must find the defendant guilty of the crime of
22 sexual abuse in the first degree as charged in the
23 third count.

24 On the other hand, if you find that the
25 People have not proven beyond a reasonable doubt either

Jury Charge

856

1 one or both of those elements, you must find the
2 defendant not guilty of the crime of sexual abuse in
3 the first degree as charged in the third count.

4 Turning to the lesser included offense in
5 that count, sexual abuse in the third degree, that's
6 count four, under our law a person is guilty of sexual
7 abuse in the third degree when he or she subjects
8 another person to sexual contact without that person's
9 consent.

10 Some of the terms used in this definition
11 have their own special meaning in our law. I will now
12 give you the meaning of the following terms:

13 Sexual contact and without a person's
14 consent.

15 Again, sexual contact means any touching of
16 sexual or other intimate parts of a person not married
17 to the actor for the purpose of gratifying the sexual
18 desire of either party. It includes the touching of
19 the actor by that person as well as the touching of
20 that person by the actor, whether directly or through
21 clothing.

22 Sexual contact takes place without a person's
23 consent when it results from any circumstances in which
24 a person does not expressly or impliedly acquiesce in
25 the actor's conduct.

Jury Charge

857

1 In order for you to find the defendant guilty
2 of this crime the People are required to prove from all
3 the evidence in the case beyond a reasonable doubt both
4 of the following two elements:

5 One, that on or about May 1st, 2008 through
6 May 13th, 2008 in the County of Nassau, the defendant,
7 Harold Gopaul, subjected Sana Awan to sexual contact
8 and, two, that the defendant did so without the consent
9 of Sana Awan in that she did not expressly or impliedly
10 acquiesce to the defendant's conduct.

11 Therefore, if you find that the People have
12 proven beyond a reasonable doubt both of those elements
13 you must find the defendant guilty of the crime of
14 sexual abuse in the third degree as charged in the
15 fourth count.

16 On the other hand, if you find that the
17 People have not proven beyond a reasonable doubt either
18 one or both of these elements you must find the
19 defendant not guilty of the crime of sexual abuse in
20 the third degree as charged in the fourth count.

21 I'm going to continue -- members of the jury,
22 I at this point have given you the definitions, if you
23 will, in at least two instances for both sexual abuse
24 in the first degree and sexual abuse in the third
25 degree as I've outlined. I'm not going to keep on

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Jury Charge

858

1 repeating those definitions.

2 If during the course of your deliberations
3 there's any question in your minds about some of those
4 definitions, you want to hear them again, I will gladly
5 give that instruction to you.

6 So as I continue at this point I'm going to
7 go through the sexual abuse in the first degree and the
8 lesser included sexual abuse in the third degree as it
9 relates to the different times that have been charged
10 in this particular case.

11 The fifth count is sexual abuse in the first
12 degree.

13 Under our law, a person is guilty of sexual
14 abuse in the first degree when he or she subjects
15 another person to sexual contact by forcible
16 compulsion.

17 Under our law, it is an element of this
18 offense that the sexual act was committed without
19 consent.

20 Sexual contact takes place without a person's
21 consent when the lack of consent results from forcible
22 compulsion.

23 The definitions of sexual contact and
24 forcible compulsion I've previously given you and they
25 apply to this count as well.

Jury Charge

859

1 In order for you to find the defendant guilty
2 of this crime the People are required to prove from all
3 the evidence in the case beyond a reasonable doubt both
4 of the following two elements:

5 One, that on May 14th, 2008, in the County of
6 Nassau, the defendant, Harold Gopaul, subjected Sana
7 Awan to sexual contact.

8 And, two, that the defendant did so without
9 Sana Awan's consent by use of forcible compulsion.

10 Therefore, if you find that the People have
11 proven beyond a reasonable doubt both of those elements
12 you must find the defendant guilty of the crime of
13 sexual abuse in the first degree as charged in the
14 fifth count.

15 On the other hand, if you find that the
16 People have not proven beyond a reasonable doubt either
17 one or both of these elements you must find the
18 defendant not guilty of the crime of sexual abuse in
19 the first degree as charged in the fifth count.

20 The sixth count is sexual abuse in the third
21 degree.

22 Under our law, a person is guilty of sexual
23 abuse in the third degree when he or she subjects
24 another person to sexual contact without that person's
25 consent.

Jury Charge

860

1 The same definitions I gave you previously
2 apply to this count as well with regard to sex abuse in
3 the third degree as it pertains to sexual contact and
4 without a person's consent.

5 In order for you to find the defendant guilty
6 of this crime the People are required to prove from all
7 the evidence in the case beyond a reasonable doubt both
8 of the following two elements:

9 That on or about May 14, 2008, in the County
10 of Nassau, the defendant, Harold Gopaul, subjected Sana
11 Awan to sexual contact.

12 And, two, that the defendant did so without
13 the consent of Sana Awan in that she did not expressly
14 or impliedly acquiesce to the defendant's conduct.

15 Therefore, if you find that the People have
16 proven beyond a reasonable doubt both of these elements
17 you must find the defendant guilty of the crime of
18 sexual abuse in the third degree as charged in the
19 sixth count.

20 On the other hand, if you find that the
21 People have not proven beyond a reasonable doubt either
22 one or both of these elements you must find the
23 defendant not guilty of the crime of sexual abuse in
24 the third degree as charged in the sixth count.

25 Turning to the sex -- pardon me, the seventh

Jury Charge

861

1 count, which, again, charges sexual abuse in the first
2 degree, under our law a person is guilty of sexual
3 abuse in the first degree when he or she subjects
4 another person to sexual contact by forcible
5 compulsion.

6 The same definitions I gave you previously
7 with respect to the elements of this charge, sexual
8 abuse in the first degree, apply to this count as well.

9 In order for you to find the defendant guilty
10 of this crime the People are required to prove from all
11 the evidence in the case beyond a reasonable doubt both
12 of the following two elements:

13 One, that on or about May 14th, in the County
14 of Nassau, the defendant, Harold Gopaul, subjected
15 Anna -- Sana Awan to sexual contact and, two, that the
16 defendant did so without Sana Awan's consent by use of
17 forcible compulsion.

18 Therefore, if you find that the People have
19 proven beyond a reasonable doubt both of these elements
20 you must find the defendant guilty of the crime of
21 sexual abuse in the first degree as charged in the
22 seventh count.

23 On the other hand, if you find that the
24 People have not proven beyond a reasonable doubt either
25 one or both of these elements you must find the

Jury Charge

862

1 defendant not guilty of the crime of sexual abuse in
2 the first degree as charged in the seventh count.

3 The eighth count of sexual abuse in the third
4 degree is the lesser included count of the seventh
5 count that I just read to you.

6 Under our law, a person is guilty of sexual
7 abuse in the third degree when he or she subjects
8 another person to sexual contact without that person's
9 consent.

10 Same definitions I gave you previously with
11 respect to this charge pertain to this count as well.

12 In order for you to find the defendant guilty
13 of this crime the People are required to prove from all
14 the evidence in the case beyond a reasonable doubt both
15 of the following two elements:

16 One, that on or about May 14th in the County
17 of Nassau, the defendant, Harold Gopaul, subjected Sana
18 Awan to sexual contact.

19 And, two, that the defendant did so without
20 the consent of Sana Awan in that she did not expressly
21 or impliedly acquiesce to the defendant's conduct.

22 Therefore, if you find that the People have
23 proven beyond a reasonable doubt both of these elements
24 you must find the defendant guilty of the crime of
25 sexual abuse in the third degree as charged in the

Jury Charge

863

1 eighth count.

2 On the other hand, if you find that the
3 People have not proven beyond a reasonable doubt either
4 one or both of these elements you must find the
5 defendant not guilty of the crime of sexual abuse in
6 the third degree as charged in the eighth count.

7 The ninth count is sexual abuse in the first
8 degree.

9 Under our law, a person is guilty of sexual
10 abuse in the first degree when he or she subjects
11 another person to sexual contact by forcible
12 compulsion.

13 The same definitions I gave you previously
14 with respect to sexual contact and forcible compulsion
15 pertain to this count as well.

16 In order for you to find the defendant guilty
17 of this crime the People are required to prove from all
18 the evidence in the case beyond a reasonable doubt both
19 of the following two elements:

20 One, that on or about May 19th through
21 May 23rd, 2008, in the County of Nassau, the defendant,
22 Harold Gopaul, subjected Sana Awan to sexual contact.

23 And, two, that the defendant did so without
24 Sana Awan's consent by use of forcible compulsion.

25 Therefore, if you find that the People have

Jury Charge

864

1 proven beyond a reasonable doubt both of those elements
2 you must find the defendant guilty of the crime of
3 sexual abuse in the first degree as charged in the
4 ninth count.

5 On the other hand, if you find that the
6 People have not proven beyond a reasonable doubt either
7 one or both of those elements you must find the
8 defendant not guilty of the crime of sexual abuse in
9 the first degree as charged in the ninth count.

10 Let me just see both counsel real quick.

11 (Discussion held at the bench, off the
12 record.)

13 (Sidebar conference held as follows:)

14 THE COURT: What the Court is proposing in
15 terms of the remainder of the charge is to go through
16 each count, identifying what the crime is, and indicate
17 the dates that this particular count refers to.

18 Does anybody have any objection?

19 MR. SCHECHTER: No.

20 MS. JOHNSON: No.

21 THE COURT: Does anybody suggest anything
22 different?

23 MR. SCHECHTER: No, I think that's the most
24 expeditious way of doing this, Judge.

25 MS. JOHNSON: We consent.

WS

Jury Charge

865

1 (Sidebar conference concludes.)

2 THE COURT: Members of the jury, with
3 counsel's consent, I know I'm sounding repetitive at
4 this point. It's just, as I said, there was initially
5 14 counts. Once we get into lesser included offenses
6 for each count it now literally doubles the amount of
7 counts.

8 With counsels' consent, what I'm going to do
9 at this point is identify the count for which the
10 offense is charged and I'm going to go through the
11 dates for that particular offense just to try to move
12 things along.

13 We're now up to, I believe, the tenth count.
14 That is sexual abuse in the third degree and, again,
15 that is the lesser included offense with regard to the
16 ninth count which charged sexual abuse in the first
17 degree that, in this particular count -- that applies
18 to the dates of May 19th of 2008 through May 23rd,
19 2008.

20 Might I just say that going forward the same
21 definitions with respect to sexual abuse in the first
22 degree are the same for each of the counts from here on
23 out as they have been throughout since I began.

24 And the same with respect to sexual abuse in
25 the third degree.

Jury Charge

866

1 Turning to the 11th count, that charges
2 sexual abuse in the first degree.

3 The same definitions apply to this count.

4 That deals with the dates of May 19th, 2008
5 through May 23rd, 2008. I'm just -- just for
6 completeness, the two elements with respect to that
7 date are that on or about May 19th, 2008 through May
8 23rd, 2008, in the County of Nassau, defendant, Harold
9 Gopaul, subjected Sana Awan to sexual contact and, two,
10 that the defendant did so without Sana Awan's consent
11 by use of forcible compulsion.

12 The 12th count is sexual abuse in the third
13 degree. Those deal with the dates, again, same
14 previous dates, May 19th of 2008 through May 23rd,
15 2008.

16 One, that on or about May 19th, 2008 through
17 May 23rd, 2008, in the County of Nassau, the defendant,
18 Harold Gopaul, subjected Anna Sawan (sic) to sexual
19 contact and, two, that that defendant did so without
20 the consent of Sana Awan in that she did not expressly
21 or impliedly acquiesce to the defendant's conduct.

22 Thirteenth count, sexual abuse in the first
23 degree, that deals with the dates of May 26th, 2008
24 through May 30th, 2008, that on or about May 26th, 2008
25 through May 30th, 2008, in the County of Nassau, the

Jury Charge

867

1 defendant, Harold Gopaul, subjected Anna Sawan (sic) to
2 sexual contact.

3 And, two, that the defendant did so without
4 Sana Awan's consent by the use of forcible compulsion.

5 Sexual abuse in the third degree is the
6 lesser included. That deals with the same dates I
7 previously just indicated; that on or about May 26th,
8 2008 through May 30th, 2008, in the County of Nassau,
9 defendant, Harold Gopaul, subjected Sana Awan to sexual
10 contact.

11 And, two, that the defendant did so without
12 the consent of Sana Awan in that she did not expressly
13 or impliedly acquiesce to the defendant's conduct.

14 The 15th count, sexual abuse in the first
15 degree, that deals with the dates of May 26th, 2008
16 through May 30th, 2008, that on or about May 26th, of
17 2008 through May 30th, 2008, in the County of Nassau,
18 the defendant, Harold Gopaul, subjected Anna Sawan
19 (sic) to sexual contact and, two, that the defendant
20 did so without Sana Awan's consent by use of forcible
21 compulsion.

22 The 16th count is sexual abuse in the third
23 degree as the lesser included offense of the 15th
24 count. That deals with the same dates.

25 On or about May 26th, 2008 through May 30th,

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1 2008, in the County of Nassau, the defendant, Harold
2 Gopaul, subjected Anna Sawan (sic) to sexual contact.

3 And, two, defendant did so without the
4 consent of Sana Awan in that she did not expressly or
5 impliedly acquiesce to the defendant's conduct.

6 Moving to the 17th count, again, sexual abuse
7 in the first degree, that deals with the dates of June
8 2nd, 2008 through June 6th, 2008.

9 The People are required to prove beyond a
10 reasonable doubt from all the evidence both of the
11 following two elements:

12 One, that on or about June 2nd, 2008 through
13 June 6th, 2008, in the County of Nassau, defendant,
14 Harold Gopaul, subjected Anna Sawan (sic) to sexual
15 contact.

16 And, two, defendant did so without Sana
17 Awan's consent by use of forcible compulsion.

18 The lesser included of that count is the 18th
19 count, sexual abuse in the third degree; that on or
20 about
21 June 2nd, 2008 through June 6th, 2008 in the County of
22 Nassau, the defendant subjected Sana Awan to sexual
23 contact.

24 And, two, that defendant did so without the
25 consent of Sana Awan in that she did not expressly or

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1 impliedly acquiesce to the defendant's conduct.

2 The People are required to prove both of
3 those elements of that lesser included offense in the
4 18th count beyond a reasonable doubt.

5 Moving to the 19th count, again, sexual abuse
6 in the first degree, the dates, again, are June 2nd of
7 '08 through June 6th of '08.

8 The People are required to prove from all of
9 the evidence in the case beyond a reasonable doubt both
10 of the following two elements:

11 One, that on or about June 2nd of '08 through
12 June 6th of '08, in the County of Nassau, the
13 defendant, Harold Gopaul, subjected Anna Sawan (sic) to
14 sexual contact.

15 And, two, that the defendant did so without
16 Sana Awan's consent by use of forcible compulsion.

17 The 20th count is the lesser included count
18 of sexual abuse in the third degree.

19 In order for the defendant to be found guilty
20 of this charge the People are required to prove from
21 all the evidence in the case beyond a reasonable doubt
22 both of the following two elements.

23 One, that on or about June 2nd of '08 through
24 June 6th of '08, in the County of Nassau, defendant,
25 Harold Gopaul, subjected Anna Sawan (sic) to sexual

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1 contact.

2 And, two, that the defendant did so without
3 the consent of Sana Awan in that she did not expressly
4 or impliedly acquiesce to the defendant's conduct.

5 The 21st count, sexual abuse in the first
6 degree, in order for you to find the defendant guilty
7 of this crime the People are required to prove from all
8 the evidence in the case beyond a reasonable doubt both
9 of the following two elements:

10 One, that on or about June 9th, 2008 through
11 June 13th, 2008, in the County of Nassau, the
12 defendant, Harold Gopaul, subjected Anna Sawan (sic) to
13 sexual contact and, two, that the defendant did so
14 without Sana Awan's consent by use of forcible
15 compulsion.

16 The 22nd count is sexual abuse in the third
17 degree. Again, that's the lesser included count of the
18 21st count; that, on or about June 9th, 2008 through
19 June 13th, 2008, in the County of Nassau, the
20 defendant, Harold Gopaul, subjected Anna Sawan (sic) to
21 sexual contact.

22 And, two, that the defendant did so without
23 the consent of Sana Awan in that she did not expressly
24 or impliedly acquiesce to the defendant's conduct.

25 Hold on, we only have two more counts left.

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1 The 23rd count, sexual abuse in the first
2 degree, that deals with the dates of June 9th, 2008
3 through June 13, 2008.

4 In order for you to find the defendant guilty
5 of this crime the People are required to prove from all
6 the evidence in the case beyond a reasonable doubt both
7 of the following two elements:

8 One, that on or about June 9th, 2008 through
9 June 13th, 2008, in the County of Nassau, the
10 defendant, Harold Gopaul, subjected Sana Awan to sexual
11 contact.

12 And, two, that the defendant did so without
13 Sana Awan's consent by use of forcible compulsion.

14 With regard to the 24th and final count of
15 sex abuse in the third degree, that being a lesser
16 included offense of the 23rd count, that deals with the
17 same dates.

18 In order for you to find the defendant guilty
19 of this crime the People are required to prove from all
20 the evidence in the case beyond a reasonable doubt both
21 of the following two elements:

22 One, that on or about June 9th, 2008 through
23 June 13th, 2008, in the County of Nassau, the
24 defendant, Harold Gopaul, subjected Sana Awan to sexual
25 contact.

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1 And, two, that the defendant did so without
2 the consent of Sana Awan in that she did not expressly
3 or impliedly acquiesce to the defendant's conduct --
4 actually, I stand corrected.

5 The 25th count, sex abuse in the first
6 degree, that deals with the dates of June 19th, 2008
7 through June 20th, 2008.

8 In order for you to find the defendant guilty
9 of this crime the People are required to prove from all
10 the evidence in the case beyond a reasonable doubt both
11 of the following two elements:

12 One, that on or about June 19th, 2008 through
13 June 20th, 2008, in the County of Nassau, defendant,
14 Harold Gopaul subjected Sana Awan to sexual contact.

15 And, two, that the defendant did so without
16 Sana Awan's consent by use of forcible compulsion.

17 With regard to the lesser included count of
18 sex abuse in the third degree, that's the 26th count,
19 that is the lesser included count of the 25th count
20 which I just read to you, the same dates apply to this
21 count as well.

22 The 27th count is sex abuse in the first
23 degree. Dates in that count deal with June 19th 2008
24 through June 20th, 2008.

25 In order for you to find the defendant guilty

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1 of this crime the People are required to proven from
2 all the evidence in the case beyond a reasonable doubt
3 both of the following two elements:

4 One, that on or about June 19th, 2008 through
5 June 20th, 2008, in the County of Nassau, defendant,
6 Harold Gopaul, subjected Sana Awan to sexual contact.

7 And, two, that the defendant did so without
8 Sana Awan's consent by use of forcible compulsion.

9 And, finally, the 28th count deals with the
10 same dates. It's the same lesser included count of the
11 27th count which I just read to you.

12 In order for to you find the defendant guilty
13 of this crime the People are required to prove from all
14 the evidence in the case beyond a reasonable doubt both
15 of the following two elements:

16 One, that on or about June 19th, 2008 through
17 June 20th, in the County of Nassau, the defendant,
18 Harold Gopaul, subjected Sana Awan to sexual contact.

19 And, two, that the defendant did so without
20 the consent of Sana Awan in that she did not expressly
21 or impliedly acquiesce to the defendant's conduct.

22 We have now come to that part of my charge
23 dealing with the process of deliberations.

24 Your verdict on each count you consider,
25 whether guilty or not guilty, must be unanimous; that

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1 is, each and every juror must agree to it.

2 No one expects that all jurors will have the
3 same view of the case when they first enter the jury
4 room. To reach a unanimous verdict you must deliberate
5 with the other jurors. That means you should discuss
6 the evidence and consult with each other, listen to
7 each other, give each other's views careful
8 consideration and reason together when considering the
9 evidence.

10 And when you deliberate you should do so with
11 the view toward reaching an agreement if it can be done
12 without surrendering your individual judgment. Each of
13 you must decide this case for yourself, but only after
14 a careful and impartial consideration of the evidence
15 with the other jurors.

16 You should not surrender an honest view of
17 the evidence simply because you want the trial to end
18 or you're outvoted.

19 At the same time, you should not hesitate to
20 re-examine your views and change your mind if you
21 become convinced your position was not correct.

22 In other words, ladies and gentlemen, when
23 you enter the jury room you may have individually
24 reached certain tentative opinions and conclusions.
25 Before finalizing those opinions and conclusions you

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1 should deliberate with the other jurors. You should be
2 open to reason and be willing to either adhere to your
3 opinion and conclusions if persuaded you are correct or
4 to change your opinion or conclusions if persuaded you
5 are not correct.

6 In the interests of justice, please make
7 every effort consistent with your conscience and the
8 evidence in this case to harmonize your views and
9 decisions in this case with those of your fellow jurors
10 and make every effort to come to a unanimous agreement
11 based on the law and the facts of this case.

12 To the best of your ability, I ask you to
13 apply common sense and good judgment.

14 Do not let fear, favor, sympathy, bias,
15 prejudice or consideration of a possible sentence or
16 punishment sway your minds in any way in analyzing the
17 testimony.

18 Decide this case as you have promised;
19 fairly, on the evidence and on the law, whether you
20 agree with the law or not.

21 You may see any or all exhibits which were
22 received in evidence. Simply write me a note telling
23 me which exhibit or exhibits you wish to see.

24 You may also have the testimony of any
25 witness read back to you in whole or in part.

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1 Again, if you want a readback write me a note
2 telling me what testimony you wish to hear.

3 If you are interested in hearing only a
4 portion of a witness's testimony please specify in your
5 note which witness and, with as much detail as
6 possible, which part of the testimony you want to hear.

7 If you want to hear all or part of a
8 witness's testimony only during a particular
9 examination, for example, direct or cross-examination,
10 please so specify.

11 Please feel free to identify the particular
12 examination you want to hear by using the name of the
13 lawyer who conducted the examination. The names of the
14 lawyers will be listed on the verdict sheet in the
15 order in which they examined the witnesses.

16 The detailed description of what you want to
17 hear is necessary because we must read each question
18 and answer in order to decide whether it is part of
19 what you asked for. That process normally takes some
20 time, so please be patient while we search the record
21 to answer your requests.

22 In the alternative, we can respond faster to
23 a request to read back the entire testimony of a
24 witness or the entire testimony of a witness during a
25 particular examination and, if you wish, you can

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1 authorize your foreperson to raise his hand when the
2 court reporter has read everything you wanted to hear.

3 Of course, when testimony is read back
4 questions to which an objection was sustained and
5 material otherwise struck from the record is not read
6 back.

7 If you have a question on the law please
8 write a note specifying what you want me to review with
9 you.

10 Under our law, the first juror selected is
11 known as our foreperson. I believe it's you, Mr. Ross.
12 You're our first juror selected.

13 During deliberations the foreperson's opinion
14 and vote are not entitled to any more importance than
15 that of any other juror.

16 What we ask the foreperson to do during
17 deliberations is to sign any written note that the jury
18 sends to the Court. The foreperson does not have to
19 write the note or agree with its contents. The
20 foreperson's signature only indicates that the writing
21 comes from the jury.

22 The foreperson may also chair the jury's
23 discussions during deliberations.

24 When the jury has reached a verdict, guilty
25 or not guilty, the entire jury will be asked to come

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1 into court. The foreperson will be asked whether the
2 jury has reached a verdict.

3 If the foreperson says yes he will then be
4 asked what the verdict is for each charged crime and
5 considered in accordance with my instructions.

6 After that the entire jury will be asked
7 whether that is their verdict and will answer either
8 yes or no.

9 Finally, upon the request of a party each
10 juror will be asked individually whether the announced
11 verdict is the verdict of that juror and then, upon
12 being asked, each juror will answer yes or no.

13 All right, when you retire to begin your
14 deliberations I will give you a form known as a verdict
15 sheet. The verdict sheet lists each count submitted
16 for your consideration, the manner in which you are to
17 consider the counts and the possible verdicts.

18 Please use the form to record your verdict
19 with an X or a check mark in the appropriate place for
20 each count you consider in accordance with my
21 instructions.

22 With regard to jury deliberation rules, there
23 are a few remaining rules which you must observe during
24 deliberations which are very important.

25 Number one, while you are here in the

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1 courthouse deliberating on the case you will be
2 sequestered, meaning you will all be kept together in
3 the jury room under the supervision of a court officer.

4 You may not leave the jury room without
5 permission and if you have a beeper or a cell phone or
6 other electronic device please give it to a court
7 officer to hold for you while you are engaged in
8 deliberations.

9 Number two, you must deliberate about the
10 case only when you are all gathered together in the
11 jury room.

12 You must not, for example, be discussing the
13 case as you go to and from the courtroom. It is simply
14 important that each juror have the opportunity to hear
15 whatever another juror has to say about the case and by
16 that -- and that, by law, must only be done when you're
17 all gathered together in the jury room.

18 Thus, if for any reason all 12 of you are not
19 gathered together in the jury room please stop
20 deliberating until all 12 jurors are present in the
21 jury room.

22 During your deliberations you must only
23 discuss the case amongst yourselves. You must not
24 discuss the case with anyone else, including a court
25 officer, or permit anyone other than a fellow juror to

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1 discuss the case in your presence.

2 If you have a question or request you must
3 communicate with me by writing a note. The law
4 requires you communicate with me in writing, in part,
5 to make sure there are no misunderstandings. Give the
6 note to a court officer who, in turn, will give it to
7 me.

8 When the jury room door is opened to give the
9 court officer the note please stop deliberating until
10 the officer has left and the door is closed.

11 In any note that you send me do not tell me
12 what the vote of the jury is on any count.

13 Sometimes I may need a note clarified and if
14 that can be done by asking the foreperson a question
15 that can be answered yes or no I may do so. Otherwise
16 I will ask you to write another note answering my
17 question.

18 I should explain, under our law I am not
19 permitted to have a conversation about the facts of the
20 case or possible verdict or a vote of the jury on any
21 count with any one juror or group of jurors or even all
22 the jurors.

23 If a juror wants to speak with me during
24 deliberations an appropriate meeting here in the
25 courtroom with the parties will be arranged.

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1 No juror, however, can tell me what is being
2 said about the facts of the case or possible verdict or
3 what the vote of any juror or jury is on any count.

4 While I will, of course, listen to whatever a
5 juror has to say that does not involve those subjects,
6 I may not be able to respond to those jurors if the
7 response involves instructions on the law. I may be
8 required to call into -- I may be required, I should
9 say, to call into court the entire jury and respond by
10 speaking to the entire jury.

11 The reason for that is that our law wants to
12 make sure that each and every juror hears at exactly
13 the same time whatever I have to say about the law.
14 Our law wants to make sure that the jury hears those
15 instructions from me and not another juror.

16 Before I let you begin deliberations I just
17 want to see both counsel.

18 (Sidebar conference held as follows:)

19 MR. SCHECHTER: I'm going to ask that the
20 alternate juror be discharged.

21 THE COURT: You want that?

22 MR. SCHECHTER: I want the alternate juror
23 discharged.

24 THE COURT: Anybody, while -- off the
25 record.)

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1 (Discussion held off the record.)

2 (Sidebar conference concludes.)

3 THE COURT: All right, members of the jury,
4 just stay there one minute.

5 (Sidebar conference held as follows:)

6 THE COURT: I'm giving a copy of the proposed
7 verdict sheet to both counsels.

8 Anybody have any objections?

9 MS. JOHNSON: At this time I don't see any,
10 Judge.

11 MR. SCHECHTER: I don't either, Judge.

12 THE COURT: Does anybody have any objections
13 or requests for any further charge with respect to the
14 charge at this time?

15 MR. SCHECHTER: No, Judge.

16 MS. JOHNSON: No.

17 THE COURT: All right, members of the jury,
18 the verdict sheet, which is what we were just
19 finalizing here, is a little lengthy, obviously, in
20 light of the number of counts. It's going to be marked
21 as a Court exhibit.

22 You're going to see from the verdict sheet it
23 gives the count of each charge, the crime charged,
24 there's a box for guilty or not guilty. There's the
25 title to the action here.

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1 As you go through the counts you'll see with
2 respect to the charges of sexual abuse in the first
3 degree, you'll see as they appear throughout the
4 verdict sheet there's an instruction that indicates if
5 guilty of count one, which is, for example, sexual
6 abuse in the first degree, do not consider count two,
7 which is sexual abuse in the third degree, proceed
8 directly to count three. It's kind of
9 self-explanatory, if you will.

10 If not guilty of count one, which is the sex
11 abuse in the first degree, then consider the lesser
12 included offense of sexual abuse in the third degree.

13 It's rather self-explanatory, if you will.

14 It also has the dates of each incident as
15 I've referred to here in my charge.

16 So that's been marked as a Court exhibit.
17 It's going to go in with you to the jury room.

18 At this time --

19 MS. JOHNSON: Judge, could we actually just
20 approach for one second, I'm sorry?

21 (Discussion held at the bench, off the
22 record.)

23 THE COURT: All right, so, at this time,
24 members of the jury, I appreciate your patience. I
25 know that was a long charge. I think it was just the

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1 nature -- once you include the lesser includeds that
2 obviously lengthened it.

3 So at this time we're going to allow to you
4 begin your deliberations. Obviously, I think you're
5 going to take up lunch first, which is here.

6 Just follow my sergeant.

7 (Jury exits.)

8 THE COURT: Mr. Schechter, do you have any
9 objection if we bring the alternate back at 3; let her
10 have her lunch and then we'll excuse her?

11 MR. SCHECHTER: Yes, no problem with that,
12 Judge.

13 THE COURT: Counsel, do I have a stipulation
14 that should the jury request any exhibits marked in
15 evidence that they can get them without coming back to
16 the courtroom?

17 MS. JOHNSON: Yes.

18 MR. SCHECHTER: No objection.

19 MS. JOHNSON: No objection, your Honor. No
20 objection.

21 As to the knife and video, whatever the
22 Court's pleasure.

23 THE COURT: If they ask for the knife it will
24 go in with a court officer.

25 If they ask to see the video it would be my

1 intention to bring them back to the courtroom to play
2 it.

3 MS. JOHNSON: I'll leave the knife and the
4 video.

5 THE COURT: Yes.

6 (The luncheon recess was taken at this time.)

7 * * * * *

8 A F T E R N O O N S E S S I O N

9 THE COURT: If we could go on the record?

10 All right, Ms. Johnson and Mr. Schechter,
11 we've received a note from the jury. It's been marked
12 Court Exhibit Number 7. The contents of the note have
13 been shared with both of you. It lists, in essence,
14 ten items.

15 First item is explanation for sexual abuse in
16 the first degree and sexual abuse in the third degree
17 and then in writing -- and then, in a different color
18 ink, it says in writing, if possible, and forcible
19 compulsion.

20 My intention is to read both the first degree
21 sexual abuse and the third degree sexual abuse charges
22 to them and their definitions, including forcible
23 compulsion. I'm going to tell them they cannot get it
24 in writing for obvious reasons.

25 The next request is testimony -- it says

1 testify, I believe it's testimony, of Officer Alfaro.

2 My reporter will read both, her entire
3 testimony, unless they indicate that they want it
4 differently.

5 Number 3 is Father's Day card with pictures
6 and family in Ecolab uniform.

7 I do not believe that was introduced into
8 evidence. I would indicate to them, of course,
9 however, that there was testimony regarding that from,
10 I think, Sana Awan.

11 MR. SCHECHTER: Yes.

12 THE COURT: And should they want that they
13 can request that item.

14 Number 4 is a videotaped confession which we
15 will play once we're concluded.

16 Number 5, Mr. Gopaul's written
17 confessions/statements.

18 They've been provided.

19 Number 6, Sana's statement taken at the 105th
20 precinct, those statements were not introduced in
21 evidence although there was some testimony with respect
22 to them but they were not introduced into evidence and
23 therefore not available to them. I think they may have
24 been marked as exhibits for identification.

25 Number 7 is the notes that were taken by

1 Detective Moran during his interview with Sana.

2 Again, that's not -- that item was only
3 marked for identification. It was not introduced into
4 evidence. I would also indicate to them that there was
5 some testimony regarding those notes. If they want
6 that they're entitled to that.

7 Number 8 is Shulman's testimony when he
8 claimed not to have discussed the charges with
9 Mr. Gopaul prior to the written confession.

10 My reporter is going to search that out and
11 get that. I don't know if we'll get to it by the end
12 of today, but we'll try.

13 Number 9 is the clarification that Anna Sawan
14 (sic) referred to during the charge to the jury is the
15 same person as Sana Awan. If I misspoke I will tell
16 them that I did and it is one and the same person.

17 Finally, number ten, the fear -- first four
18 lines of the poem that was read. That was -- that
19 page, I should say, or that page -- or that book, I
20 should say, was admitted into evidence, the first four
21 lines.

22 I've had a photocopy made of those first four
23 lines and I believe counsel has a photocopy of them and
24 I'll mark this as a Court exhibit.

25 MR. SCHECHTER: Right.

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1 THE COURT: And we'll give this to the jury.

2 MR. SCHECHTER: Thank you.

3 THE COURT: Anybody have any objections or
4 further requests?

5 MS. JOHNSON: No objection, Judge.

6 MR. SCHECHTER: No.

7 (Pause in the proceedings.)

8 MS. JOHNSON: Judge, what are we going to do
9 with the alternate now?

10 THE COURT: We'll take care of her after we
11 take care of this.

12 (Jury enters.)

13 THE COURT: All right, Mr. Ross, is there a
14 further note that you want to give us?

15 THE FOREPERSON: Yes, I have a question on
16 this document that you were nice enough to supply us
17 with.

18 THE COURT: Why don't we do this?

19 Let me deal with the note you sent up.

20 Whatever it is that you want me to address
21 with respect to what you have in your hand there, write
22 me another note because I need to have any kind of
23 requests that you make in writing. I know it may be
24 very simple and I can answer it yes or no, but I need
25 to have a note.

1 All right, speaking of notes, members of the
2 jury, we received a note today's date, it's been marked
3 a Court exhibit as Court Exhibit Number 7, signed by
4 our foreperson at 2:42 this afternoon.

5 The contents of the note have been shared
6 with both of the attorneys and the note reads as
7 follows:

8 Number 1, explanation of sexual abuse in the
9 first degree and sexual abuse in the third degree and
10 then, in brackets, in writing if possible, and forcible
11 compulsion.

12 I can certainly read you back those two
13 charges and the definitions that pertain to them.

14 I cannot give it to you, however, in writing
15 but, I will certainly read it back to you.

16 Number 2, it appears to, looking at it, say
17 testify of Officer Alfaro. I'm assuming that's
18 testimony of Officer Alfaro. If I'm incorrect in that
19 let me know.

20 Number 3, Father's Day card with pictures of
21 family in Ecolab uniform.

22 That is not introduced in evidence and, if
23 you recall, I said that only those documents that were
24 introduced in evidence you're -- you can obviously see.

25 Items that were marked for identification you

1 cannot. They're not in evidence and therefore you
2 cannot see it.

3 However, I would just also say that there was
4 some testimony regarding that Father's Day card, I
5 believe, by Ms. Sana Awan.

6 Should you request testimony with respect to
7 the card, obviously that's something that is in
8 evidence and you can obviously ask me for that and
9 we'll provide that to you.

10 Four, videotaped confession. When I get done
11 with the note we're going to play the videotaped
12 confession while we're here.

13 Number 5, Mr. Gopaul's written
14 confession/statements. I've provided them to you
15 already.

16 Number 6, Sana's statements taken at the
17 105th precinct.

18 Again, there was an item marked for
19 identification. It is not in evidence. I cannot give
20 you something that is not in evidence.

21 However, to the extent that there was any
22 testimony regarding that item that was marked for
23 identification, if you want it you could certainly ask
24 for it.

25 Number 7, the notes that were taken by

1 Detective Moran during his interview with Sana.

2 Same thing. It's not in evidence. It was
3 only marked for identification. There was some
4 testimony, I believe, regarding his -- Detective
5 Moran's notes. Should you ask for that, want it, we'll
6 provide it to you.

7 Number 8, Shulman's testimony when he claimed
8 not to have discussed the charges with Mr. Gopaul prior
9 to the written confession.

10 Wendy is going to be searching that out while
11 you're looking at the videotape in a moment.

12 Number 9, clarification that Anna Sawan
13 referred to during the charge to the jury is the same
14 person as Sana Awan.

15 To the extent I may have crossed you up with
16 that, they are one and the same person. If I said Anna
17 Sawan, my apologies, I meant Sana Awan.

18 Number 10, the first four lines of the poem
19 that was read.

20 We have made a photocopy of those first four
21 lines. It's been marked as a Court exhibit and that
22 will be given to you when you go downstairs to resume
23 your deliberations.

24 At this time I'm going to address the first
25 portion or the first thing you asked for in your note,

1 which was explanation of sexual abuse in the first
2 degree and sexual abuse in the third degree and
3 forcible compulsion.

4 Under our law, a person is guilty of sexual
5 abuse in the first degree when he or she subjects
6 another person to sexual contact by forcible
7 compulsion.

8 Under our law, it is also an element of this
9 offense that the sexual act was committed without
10 consent.

11 Sexual contact takes place without a person's
12 consent when the lack of consent results from forcible
13 compulsion.

14 Some of the terms used in this definition
15 have their own special meaning in our law.

16 I will now give you the meaning of the
17 following terms:

18 Sexual contact, without a person's consent
19 and forcible compulsion.

20 Sexual contact means any touching of the
21 sexual or other intimate parts of a person for the
22 purpose of gratifying the sexual desire for either
23 party.

24 It includes the touching of the actor by that
25 person as well as the touching of that person by the

1 actor, whether directly or through clothing.

2 Forcible compulsion means to intentionally
3 compel, either by, one, the use of physical force, or,
4 two, by a threat expressed or implied which places a
5 person in fear of immediate death or physical injury to
6 himself or herself.

7 Okay, turning to sexual abuse in the third
8 degree, under our law, a person is guilty of sexual
9 abuse in the third degree when he or she subjects
10 another person to sexual contact without that person's
11 consent.

12 Some of the terms used in this definition
13 have their own special meaning in our law.

14 I will now give you the meaning of the
15 following terms:

16 Sexual contact and without a person's
17 consent.

18 Sexual contact means any touching of the
19 sexual or other intimate parts of a person not married
20 to the actor for the purpose of gratifying the sexual
21 desire of either party.

22 It includes the touching of the actor by that
23 person as well as the touching of that person by the
24 actor, whether directly or through clothing.

25 Sexual contact takes place without a person's

1 consent when it results from any circumstances in which
2 a person does not expressly or impliedly acquiesce to
3 the actor's conduct.

4 All right, that takes care of the first
5 request in your note.

6 At this point what we're going to do is turn
7 to the videotape which I think Ms. Johnson has queued
8 up and ready to go?

9 (People's Exhibit 1 published at this time.)

10 THE COURT: All right, members of the jury,
11 Wendy has been able to get to the testimony that you
12 had asked in your note under Number 8 -- I stand
13 corrected.

14 We do have Officer Alfaro's testimony so we
15 will take that first.

16 (Record read.)

17 THE COURT: All right, members of the jury,
18 what I'm going to do at this point, Wendy, I think, has
19 Detective Shulman's direct, she hasn't had a chance to
20 go through the cross with respect to your question
21 Number 8, so what I'm going to do is send you back
22 downstairs and continue deliberating with what you have
23 heard in terms of our response to your notes. I am
24 going to send you back with the four lines from the
25 poem. I don't know the exhibit number. So I'm going

1 to send you back downstairs.

2 Mr. Ross, when you came up it looked like you
3 were going -- you wanted to ask me something and, as I
4 said to you, whatever you want to ask please just put
5 it in a note and just bear in mind I'm probably going
6 to have you back up here, I'm assuming, shortly, but
7 I'm definitely going -- it depends on how long Wendy
8 tells me the testimony is.

9 I like to break by 4:30. If it's going to go
10 beyond 4:30 we'll probably take up Shulman's testimony
11 in the morning, but for now, while we're looking at it,
12 why don't you go downstairs?

13 (Jury exits.)

14 THE COURT: Mr. Schechter, I think you
15 indicated that you're consenting at this time to
16 excusing Ms. Torres, our alternate?

17 MR. SCHECHTER: Yes.

18 THE COURT: All right, so I'm going to take
19 care of that at this point.

20 MR. SCHECHTER: Thank you, Judge.

21 (Alternate enters.)

22 THE COURT: Ms. Torres, good afternoon.

23 As our lone alternate at this point, in
24 speaking to the attorneys, at this point it would be
25 only with their permission you would be allowed to

1 enter the jury deliberations, should one of our sworn
2 12 not be able to continue.

3 At this point they would not be -- they've
4 indicated to me that they would not be inclined at this
5 point to do that, so I don't want to have you stay
6 around here any longer than necessary since you would
7 not be allowed to go into the deliberating jury at this
8 point.

9 But I do want to thank you for your
10 participation. I know it's difficult being an
11 alternate, not being able to deliberate, as they are
12 now, but obviously they serve an important function.
13 As you saw, one of the sworn alternates, the gentleman
14 before you, actually became one of the sworn jurors in
15 this case.

16 So it's with my deepest thanks. You're free
17 to speak to whomever you wish. You are under no
18 obligation to speak to anybody.

19 THE JUROR: Okay.

20 THE COURT: So thank you again and we hope to
21 see you back soon.

22 THE JUROR: All right.

23 (Alternate juror excused.)

24 (Recess in the proceedings.)

25 (Jury enters.)

1 THE COURT: All right, members of the jury,
2 as I indicated before, I was going to have you up by
3 4:30.

4 I see we've got another note which I'll deal
5 with in the morning.

6 At this point I'm going to ask you to cease
7 deliberations, obviously, until you're all together
8 back in the jury room tomorrow morning.

9 One thing I just want to bring up and it
10 didn't occur to me until after you went back
11 downstairs.

12 With regard to your request on Number 8, item
13 Number 8, Shulman's testimony when he claimed not to
14 have discussed the charges with Mr. Gopaul prior to the
15 written confession, both myself and counsel have agreed
16 that there really wasn't any testimony with respect to
17 charges and by that I mean charges in the sense that
18 I've charged you here today as to the charges that
19 you're to be considering.

20 There was some testimony about as to whether
21 or not Detective Shulman had discussed with Mr. Gopaul
22 what Ms. Awan had said in his interview of her, whether
23 or not he had discussed that with him. I'm
24 paraphrasing, in sum and substance.

25 If that's what you're looking for then there

1 is testimony to that effect and Wendy is going to
2 locate it if she hasn't located most of it already.

3 So tomorrow when you come back in would you
4 please write me a note with respect to that so it's
5 clear, because I do need it in a note that that's what
6 you're looking for as to whether or not Detective
7 Shulman had discussed prior to interviewing Mr. Gopaul
8 or -- or when he interviewed Mr. Gopaul what his
9 conversations were with respect to Miss Sana Awan,
10 okay?

11 So at this point I'm going to ask you to
12 cease deliberations.

13 Please don't discuss the case at this time
14 amongst yourselves or with anyone else.

15 Please don't view or visit any of the areas
16 that you've heard described.

17 Have a good evening. We'll see you back here
18 tomorrow at 9:30. We will again be taking your lunch
19 order first thing in the morning, okay?

20 (Jury exits.)

21 (Proceedings adjourned to Friday, March 15th,
22 2009 at 9:30 a.m.)

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 80

3 -----X
 4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
 : No. 2415N/08
 5 -against- :
 :
 6 HAROLD GOPAUL, : SEX ABUSE 1
 :
 7 Defendant. : Trial
 -----X

8 May 15, 2009

9 252 Old Country Road
 10 Mineola, New York

11 B E F O R E:

12 HONORABLE JAMES P. McCORMACK,
 13 Acting Supreme Court Justice

14 A P P E A R A N C E S:

15 (As previously noted.)

16 * * * * *

17 THE CLERK: Case on trial of the the People
 18 of the State of New York against Harold Gopaul,
 19 Indictment 2415N of 2008.

20 Are the People ready?

21 MS. JOHNSON: Ready, Judge.

22 THE CLERK: Defense counsel ready?

23 MR. SCHECHTER: Ready.

24 THE COURT: Counsel, at the close of business
 25 yesterday we received a further note from the jury

1 which I've now shared with both of you. It's been
2 marked Court Exhibit 9 signed yesterday afternoon at
3 4:22 p.m. by our foreperson. It reads as follows:

4 "Number 1. On the verdict sheet why are the
5 date ranges identical for multiple counts of the same
6 charge? Example Counts 1 and 3," with a question mark.

7 "Number 2. Any part of Detective Moran's
8 testimony that dealt with the notes that he took during
9 or after he interviewed Sana.

10 "Number 3. At least one juror's concerned
11 about how to evaluate," what appears to the Court to
12 be, "14 times two, 28 counts, without being able to
13 consult written material so that we are able to remain
14 clear on which testimony relates to which dates.
15 That's a lot to commit to memory."

16 MR. SCHECHTER: You have to rely on the
17 testimony.

18 THE COURT: In my view, Counts 1 and 3 --
19 pardon me, Questions 1 and 3 in the note are somewhat
20 interrelated.

21 And what I was going to say to the jury
22 initially, as it is on the verdict sheet, there are the
23 dates of incident or periods of time, if you will, that
24 were alleged in this indictment. There's several
25 either dates of incident or periods of time and that

1 with respect to the charges in the indictment that
2 allege sex abuse in the first degree. For each or for
3 every date of incident there's an allegation the
4 defendant, by forcible compulsion, touched the breasts
5 of the complainant and that the defendant, by forcible
6 compulsion, touched the vagina of the complainant by
7 forcible compulsion.

8 And that with respect to the lesser included
9 offenses, again, for each count that charged sex abuse
10 in the first degree there is a lesser included offense
11 of sex abuse in the third degree under the theory that
12 the defendant touched either the breast or the vagina
13 of the complainant without that person's consent when
14 it results from any circumstance in which a person does
15 not expressly or impliedly acquiesce to his conduct.
16 I'm reading from the definition with respect to that.

17 So I was going to explain that to them that
18 for each count there's two separate acts that are
19 alleged with respect to, if you will, either the breast
20 or the vagina and when you have the lesser included
21 offenses it now becomes four counts and therefore
22 that's why we have 28 counts as opposed to 14.

23 Is there any dispute about my understanding
24 of the indictment as far as that's concerned?

25 MR. SCHECHTER: No.

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1 MS. JOHNSON: No.

2 THE COURT: The second issue is I've drawn a
3 new verdict sheet that I would substitute with the one
4 that they've previously been given. It's essentially
5 the same verdict sheet as they previously had and the
6 only difference is that I've added in brackets with
7 respect to each count what particular body part, if you
8 will, it applies to, breast and vagina, and I've given
9 a copy to both counsel and it was my intention that in
10 an effort to alleviate any confusion, to just to submit
11 this and take back the other verdict sheet.

12 Does anybody have any objection to that?

13 MS. JOHNSON: We consent to that.

14 THE COURT: Mr. Schechter, any objection to
15 that?

16 MR. SCHECHTER: To the amended charge sheet?

17 THE COURT: To the new verdict sheet.

18 MR. SCHECHTER: No.

19 THE COURT: All right, so that at this point
20 we'll -- I'll mark that verdict sheet, if we haven't
21 done so already, a Court exhibit. I'll give that to
22 the jury when they come upstairs.

23 As for Detective Moran's testimony, I think
24 that's pretty self-explanatory.

25 MR. SCHECHTER: That would be cross and --

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1 THE COURT: Absolutely. They want testimony
2 that dealt with the notes he took during or after the
3 interview of Sana Awan.

4 (Recess in the proceedings.)

5 THE COURT: We've received a further note
6 from the jury. I'll allow both of you to see it once
7 we deal with -- but I'm going to read it into the
8 record at this point.

9 "We, the jury, would like to hear the portion
10 of Shulman's testimony where he claimed not to have
11 discussed with Mr. Gopaul any part of the detective's
12 conversation with Sana prior to having Mr. Gopaul write
13 his statement."

14 We could take care of that now.

15 "We would also like to hear all parts of
16 Sana's testimony where she is describing interaction
17 with Mr. Gopaul.

18 "Finally, we would like to hear the
19 definition of forcible compulsion repeated three times
20 in a row."

21 What I'm going -- what I propose to do, since
22 we have the jury outside ready to come in, Wendy has
23 the first part of this note. She can respond to it
24 regarding Shulman's testimony. We can do that now.

25 The second part of it, obviously she's going

1 to have to -- which, to me, it seems to me that you
2 might as well just have her direct and
3 cross-examination read back because I think to be able
4 to parse out, you know, her interaction with Mr. Gopaul
5 is going to take more time to do that than to just read
6 her direct and cross, redirect, recross, whatever the
7 case may be.

8 "Finally, we would like to hear the
9 definition of forcible compulsion three times in a
10 row."

11 I'm going to do that so I'm going to cover
12 two-thirds of this and Moran and then you'll get Sana's
13 testimony.

14 Anybody have any objection to what I'm
15 suggesting?

16 (Jury enters.)

17 THE COURT: All right, members of the jury,
18 we received one note from you yesterday late as you
19 left for the day and that's been marked Court Exhibit
20 Number 9. It's contents have been shared with counsel
21 and I want to address that first.

22 "Number 1. On the verdict sheet why are the
23 date ranges identical for multiple counts of the same
24 charges," in brackets, "for example, Counts 1 and 3?"

25 "Number 2. Any part of Detective Moran's

1 testimony that dealt with the notes that he took during
2 or after he interviewed Sana.

3 And, "Number 3. At least one juror is
4 concerned about how to evaluate," and it appears to me
5 to say, "14 times two, 28 counts, without being able to
6 consult written material so that we are able to remain
7 clear on which testimony relates to which dates. That
8 is a lot to commit to memory."

9 All right, the question or I should say your
10 request with respect to one and three are somewhat
11 interrelated, so what I'm going to do is address them
12 to you now and then we're going to get to Detective
13 Moran's testimony.

14 If you noticed in your verdict sheet, and I'm
15 going to replace that verdict sheet with the consent of
16 both counsel with another verdict sheet when you go
17 back downstairs, you'll see that there is, in addition
18 to the verdict sheet, in order to try to alleviate
19 whatever confusion there may be, if you look at the
20 verdict sheet there are seven separate either dates of
21 incidents or periods of time that are alleged in that
22 indictment, okay?

23 In the indictment with regard to the charges
24 of sexual abuse in the first degree, for each incident
25 there's an allegation with regard to sex abuse in the

1 first degree with regard to -- an allegation that the
2 defendant, by forcible compulsion, or the defendant
3 touched the breast by use of forcible compulsion and
4 the defendant touched the vagina by forcible
5 compulsion.

6 So for each one of those dates there are two
7 different allegations with respect to the intimate
8 parts of the body, breasts, vagina.

9 Now, that's one theory that -- that was the
10 charges that are contained in the indictment.

11 So that's why, therefore, there's 14 counts
12 on the initial indictment.

13 In each instance, although it's separate
14 dates or separate periods of time, the allegation is
15 the same with respect to the body part, either breast,
16 vagina.

17 With the inclusion of the sex abuse in the
18 third degree, it's the same allegation with respect to
19 the body part, however, the distinction is that the sex
20 abuse in the third degree is when he or she subjects
21 another person to sexual contact without that person's
22 consent.

23 In sex abuse in the third degree without that
24 person's consent reads, "when it results from any
25 circumstances in which a person does not expressly or

1 impliedly acquiesce in the actor's conduct."

2 So that's the distinction.

3 So therefore, for each date there's two
4 separate charges of sex abuse in the first degree and
5 then you have two separate charges for each of those
6 dates of sex abuse in the third degree.

7 Therefore, that's why we have 28 counts,
8 seven times four is 28 still?

9 Okay, so I hope that adds or alleviates
10 somewhat of a concern.

11 What we -- what I did, just to -- we're going
12 to take back the verdict sheet that we gave you
13 initially. We're going to substitute it with a new
14 verdict sheet and on the new verdict sheet the only
15 thing that changes is we've added the words breast or
16 vagina and that's throughout the -- all of the 28
17 counts.

18 Okay, and, again, you'll notice that we have
19 the dates that reference throughout the course of the
20 verdict sheet.

21 Again, there's only separate -- seven, I
22 should say, either dates or periods of time.

23 So I hope I've answered your concern about
24 why we have all of these counts. In essence, for each
25 date or period of time there's like four counts, so

1 therefore the 28 counts, all right?

2 And, again, please keep in mind my
3 instruction to you as to how to consider the counts as
4 I've indicated to you here on the verdict sheet.

5 What we're going to do at this point is we're
6 going to get into Detective Moran's testimony that
7 dealt with the notes that he took either during or
8 after he interviewed Sana and then we're going to
9 also -- we have -- in anticipation of your note, the
10 other note this morning, which I'm going to get into
11 after we get done with Detective Moran's testimony, we
12 do have Detective Schulman's testimony with regard to
13 whether or not he -- whether he claimed not to have
14 discussed with Mr. Gopaul any part of the detective's
15 conversation with Sana prior to having Mr. Gopaul write
16 his statement. We have that ready at this point as
17 well.

18 So why don't we at this point, Wendy, deal
19 with Detective Moran's testimony and then Detective
20 Shulman?

21 (Record read.)

22 THE COURT: All right, then this morning,
23 members of the jury, we received your further note. It
24 was marked today's date at 10:30. It reads as follows,
25 I've gone over it with both counsel:

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1 "We, the jury, would like to hear the portion
2 of Detective Shulman's testimony where he claimed not
3 to have discussed with Mr. Gopaul any part of the
4 detective's conversation with Sana prior to having
5 Mr. Gopaul write his statement."

6 We just obviously covered that.

7 It continues, "We would also like to hear all
8 parts of Sana's testimony where she is describing
9 interaction with Mr. Gopaul."

10 And then, finally, "We would like to hear the
11 definition of forcible compulsion repeated three times
12 in a row."

13 At this point, with respect to the, if you
14 will, the second half of your note, "We would like to
15 hear all parts of Sana's testimony where she's
16 describing interaction with Mr. Gopaul," I think it
17 would be rather difficult for my reporter to kind of
18 parse out, you know, all of those -- all of that
19 testimony, so in an effort to be complete and to give
20 you everything we've agreed - when I say we, me, myself
21 and counsel, have agreed - to just read -- have the
22 testimony given back to you completely in light of your
23 note here because I really -- I think that it would
24 really be difficult to extract all of that and possibly
25 lose something that you may think is important.

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1 So we're going to do that now and then I will
2 conclude by reading to you the definition of forcible
3 compulsion as you've requested.

4 (Record read.)

5 THE COURT: Okay, how is everybody doing?
6 Does anybody need a break?

7 THE JUROR: I do.

8 THE COURT: We're going to take a very quick
9 break.

10 Please, while you're outside, please do not
11 discuss the case until you come back in. Obviously you
12 haven't heard the entire testimony until you come back.

13 Okay, if you could just step out we'll have
14 you back in about 5 five minutes.

15 (Jury exits.)

16 (Recess in the proceedings.)

17 THE COURT: All right, members of the jury,
18 we're going to continue with the read back of Sana
19 Awan's testimony.

20 If you would?

21 (Record read.)

22 MR. SCHECHTER: Your Honor, I don't mean to
23 interrupt, but could I approach?

24 (Discussion held at the bench, off the
25 record.)

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1 (Record read.)

2 THE COURT: All right, before I let you go,
3 and hopefully your lunch is downstairs, I'll take care
4 of the last part of the note.

5 "Finally, we would like to hear the
6 definition of forcible compulsion repeated three times
7 in a row," which I'll now do.

8 Forcible compulsion means to intentionally
9 compel either, one, by the use of physical force, or,
10 two, by a threat expressed or implied which places a
11 person in fear of immediate death or physical injury to
12 himself or herself.

13 Again, forcible compulsion means to
14 intentionally compel either by, one, the use of
15 physical force, or, two, by a threat expressed or
16 implied which places a person in fear of immediate
17 death or physical injury to himself or herself.

18 And, for the final time, final -- forcible
19 compulsion means to intentionally compel either by the
20 use of physical force -- number one, by the use of
21 physical force, or, two, by a threat expressed or
22 implied which places a person in fear of immediate
23 death or physical injury to himself or herself.

24 With that, I will let you continue your
25 deliberations. You can continue to deliberate through

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1 lunch and hopefully your lunch is awaiting.

2 (Jury exits.)

3 (The luncheon recess was taken at this time.)

4 THE COURT: All right, counsel, we've
5 received a note from our foreperson, Mr. Ross, that
6 states as follows:

7 "We have reached a verdict. It's dated
8 today's date and 1:40 this afternoon. It will be
9 marked as a Court exhibit.

10 THE COURT: Okay, we're all set.

11 (Jury enters.)

12 THE CLERK: Case on trial, the People of the
13 State of New York against Harold Gopaul,
14 Indictment 2415N of 2008.

15 Do both counsel stipulate all the jurors are
16 present and properly seated?

17 MS. JOHNSON: Yes.

18 MR. SCHECHTER: So stipulated.

19 THE COURT: All right, members of the jury,
20 we received your note indicating that you have reached
21 a verdict.

22 At this time my clerk will take the verdict.

23 THE CLERK: Will the foreperson please rise?
24 Has the jury reached a verdict?

25 THE FOREPERSON: Yes.

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1 THE CLERK: Will the defendant please rise?

2 In the case of the People against Harold
3 Gopaul, Indictment 2415N of 2008, what is your verdict
4 as to count one, sexual abuse in the first degree,
5 guilty or not guilty?

6 THE FOREPERSON: Guilty.

7 THE CLERK: What is your verdict as to
8 Count 3, sexual abuse in the third degree, guilty or
9 not guilty?

10 MR. SCHECHTER: Guilty.

11 MS. JOHNSON: Wait.

12 THE COURT: I think count three is sex abuse
13 in the first degree.

14 THE CLERK: I'm sorry, Judge.

15 What is your verdict as to Count 3, sexual
16 abuse in the first degree, guilty or not guilty?

17 THE FOREPERSON: Guilty.

18 THE CLERK: What is your verdict as to
19 Count 5, sexual abuse in the first degree, guilty or
20 not guilty?

21 THE FOREPERSON: Guilty.

22 THE CLERK: What is your verdict as to
23 Count 7, sexual abuse in the first degree?

24 THE FOREPERSON: Guilty.

25 THE CLERK: What is your verdict as to

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1 Count 9, sexual abuse in the first degree?

2 THE FOREPERSON: Guilty.

3 THE CLERK: What is your verdict as to
4 Count 11, sexual abuse in the first degree?

5 THE FOREPERSON: Guilty.

6 THE CLERK: What is your verdict as to
7 Count 13, sexual abuse in the first degree?

8 THE FOREPERSON: Guilty.

9 THE CLERK: What is your verdict as to
10 Count 15, sexual abuse in the first degree?

11 THE FOREPERSON: Guilty.

12 THE CLERK: What is your verdict as to
13 Count 17, sexual abuse in the first degree?

14 THE FOREPERSON: Guilty.

15 THE CLERK: What is your verdict as to
16 count 19, sexual abuse in the first degree?

17 THE FOREPERSON: Guilty.

18 THE CLERK: What is your verdict as to
19 Count 21, sexual abuse in the first degree?

20 THE FOREPERSON: Guilty.

21 THE CLERK: What is your verdict as to
22 Count 23, sexual abuse in the first degree?

23 THE FOREPERSON: Guilty.

24 THE CLERK: What is your verdict as to
25 Count 25, sexual abuse in the first degree?

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1 THE FOREPERSON: Guilty.

2 THE CLERK: What is your verdict as to
3 Count 27, sexual abuse in the first degree?

4 THE FOREPERSON: Guilty.

5 THE CLERK: Please be seated.

6 Members of the jury, listen to your verdict
7 as it stands recorded by the Court.

8 You say you find the defendant, Harold
9 Gopaul, guilty of Count 1, sexual abuse in the first
10 degree, guilty of Count 3, sexual abuse in the first
11 degree, guilty of Count 5, sexual abuse in the first
12 degree, guilty of Count 7, sexual abuse in the first
13 degree, guilty of Count 9, sexual abuse in the first
14 degree, guilty of Count 11, sexual abuse in the first
15 degree, guilty of Count 13, sexual abuse in the first
16 degree, guilty of Count 15, sexual abuse in the first
17 degree, guilty of Count 17, sexual abuse in the first
18 degree, guilty of Count 19, sexual abuse in the first
19 degree, guilty of Count 21, sexual abuse in the first
20 degree, guilty of Count 23, sexual abuse in the first
21 degree, guilty of Count 25, sexual abuse in the first
22 degree and guilty of Count 27, sexual abuse in the
23 first degree.

24 Is that your verdict, so say you all?

25 (Jury responds collectively in the

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1 affirmative.)

2 THE COURT: Does anybody -- Mr. Schechter, do
3 you wish to have the jury polled?

4 MR. SCHECHTER: Yes, Judge.

5 THE CLERK: Members of the jury, listen to
6 your verdict as it stands recorded by the Court.

7 You say you find the defendant Harold Gopaul
8 guilty of Count 1, sexual abuse in the first degree,
9 guilty of Count 3, sexual abuse in the first degree,
10 guilty of Count 5, sexual abuse in the first degree,
11 guilty of Count 7, sexual abuse in the first degree,
12 guilty of Count 9, sexual abuse in the first degree,
13 guilty of Count 11, sexual abuse in the first degree,
14 guilty of Count 13, sexual abuse in the first degree,
15 guilty of Count 15, sexual abuse in the first degree,
16 guilty of Count 17, sexual abuse in the first degree,
17 guilty of Count 19, sexual abuse in the first degree,
18 guilty of Count 21, sexual abuse in the first degree,
19 guilty of Count 23, sexual abuse in the first degree,
20 guilty of Count 25, sexual abuse in the first degree
21 and guilty of Count 27, sexual abuse in the first
22 degree.

23 Is that your verdict, Juror Number 1?

24 THE JUROR: Yes.

25 THE CLERK: Is that your verdict,

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1 Juror Number 2?

2 THE JUROR: Yes.

3 THE CLERK: Is that your verdict,
4 Juror Number 3?

5 THE JUROR: Yes.

6 THE CLERK: Is that your verdict,
7 Juror Number 4?

8 THE JUROR: Yes.

9 THE CLERK: Is that your verdict,
10 Juror Number 5?

11 THE JUROR: Yes.

12 THE CLERK: Is that your verdict,
13 Juror Number 6?

14 THE JUROR: Yes.

15 THE CLERK: Is that your verdict,
16 Juror Number 7?

17 THE JUROR: Yes.

18 THE CLERK: Is that your verdict,
19 Juror Number 8?

20 THE JUROR: Yes.

21 THE CLERK: Is that your verdict,
22 Juror Number 9?

23 THE JUROR: Yes.

24 THE CLERK: Is that your verdict,
25 Juror Number 10?

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1 THE JUROR: Yes.

2 THE CLERK: Is that your verdict,
3 Juror Number 11?

4 THE JUROR: Yes.

5 THE CLERK: Is that your verdict,
6 Juror Number 12?

7 THE JUROR: Yes.

8 THE CLERK: Your Honor, the verdict is
9 unanimous.

10 THE COURT: All right, members of the jury, I
11 first and foremost want to thank you on behalf of the
12 entire Nassau County court system for being willing to
13 be a juror. There is no, in my view, higher civic duty
14 that a citizen can perform than serving on a trial jury
15 and I certainly know and I can appreciate that it's not
16 easy to pass judgment on another individual, but I want
17 to thank you for your diligence, for your service, for
18 the attention that you've paid throughout the course of
19 the trial and for your timeliness in being here each
20 and every day and for your patience in taking time away
21 from your normal day-to-day duties, your jobs, your
22 family.

23 I want to thank you, again, on behalf of the
24 entire Nassau County Court system.

25 I'm going to excuse you at this time. I

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1 would like to thank you more personally in my chambers
2 in a moment.

3 A couple of things to bear in mind.

4 One, you're excused from this jury term. You
5 do not have to be a juror or in jury service for the
6 next four years, I believe, unless that should
7 change -- six? It's changed since the last time.

8 The other issue is this. You are free to
9 speak to whomever you wish to. You are under no
10 obligation to speak to anybody. Occasionally,
11 attorneys in cases sometimes, if they want, may ask
12 jurors certain questions about the case, but, again,
13 you're free to speak to them, you don't have to speak
14 to them. You're under no obligation.

15 So with that, I would like you to just follow
16 Mike, my sergeant, back in chambers, and I'll be back
17 in a moment.

18 (Jury exits.)

19 THE COURT: All right, Mr. Schechter, is
20 there any motions at this time or do you want to
21 reserve them for the time of sentence?

22 MR. SCHECHTER: No, your Honor, I think I can
23 make those motions now.

24 I would ask for a verdict of acquittal,
25 notwithstanding the judgment of the jury, the verdict

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1 of the jury, on the grounds that the People have failed
2 to prove, as a matter of law, guilt beyond a reasonable
3 doubt.

4 I further ask that a mistrial be granted once
5 again because I believe that the Court, in permitting
6 the District Attorney to bring in proof of things that
7 happened in Queens County, both by way of testimony
8 from the complainant and not minimizing the video to
9 exclude those particular items has inexorably
10 prejudiced my client and therefore I respectfully ask
11 that either a directed verdict of not guilty be imposed
12 or that the Court grant a mistrial.

13 THE COURT: All right, Ms. Johnson, I take it
14 you oppose that application?

15 MS. JOHNSON: In all respects, Judge.

16 THE COURT: All right, at this time that
17 application will be denied.

18 MR. SCHECHTER: Thank you, Judge.
19 Respectfully except.

20 THE COURT: Does either side wish to be heard
21 on the question of bail?

22 MS. JOHNSON: Your Honor, we would ask that
23 the defendant be remanded.

24 THE COURT: All right, Mr. Schechter.

25 MR. SCHECHTER: If the Court pleases, my

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1 client has been out on bail. His total bail here and
2 in Queens is \$600,000. He has been out on bail. The
3 bail represents his family's home and is partly his
4 sister's home and his passport has been surrendered as
5 a condition of that bail, so defendant is not a flight
6 risk, there's nowhere for him to go.

7 His family is here. His family, outside of
8 his wife and children, are here. There is no basis at
9 all to remand the defendant. He will be here for
10 sentence.

11 Additionally, he will have to make
12 provisions, if he can, whatever way, for the support of
13 his family and to make sure that the children -- the
14 other children are taken care of as well as his wife,
15 who is unemployed.

16 So for those reasons I respectfully ask that
17 the Court maintain the current bail until sentence at
18 which time the Court is, of course, free to sentence
19 him to whatever the Court believes is proper.

20 THE COURT: All right, at this time, in light
21 of the jury's verdict, having been found guilty on 14
22 counts of a Class D Felony, the defendant's bail will
23 be revoked and he will be --

24 MR. SCHECHTER: Rather than revoked, your
25 Honor, will that bail be exonerated?

Proceedings

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1 THE COURT: It's exonerated. He's remanded
2 pending sentence.

3 The date, Mr. Schechter?

4 MR. SCHECHTER: June 19th.

5 THE COURT: 6/19 for sentence. PSR will be
6 ordered.

7 * * * *

8 It is hereby certified that the
9 foregoing is a true and accurate
10 transcript of the proceedings.

11 
WENDY SILAS
12 OFFICIAL COURT REPORTER
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| <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
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People's Witnesses:

5

1. Christine Alioto

332

344

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2. Denise Alioto

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3. Brian Hughes

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389

396

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4. Sana Awan

401/447

496

515

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5. P.O. Celica Alfaro

578

584

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6. Det. Leonard Shulman

620

681

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7. Det. Edmond Moran

733

749

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E X H I B I T S

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FOR IDENTIFICATIONIN EVIDENCE

13

People's Exhibits:

14

1. Video

373

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15

2. Miranda

386

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3. Photo

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16

4. Vibrator

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5. Knife

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460

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6. Miranda

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7. Consent (vehicle)

640

642

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8. Consent (home)

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648

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9. Defendant's statement

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10. Defendant's statement

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11. Defendant's statement

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12. Defendant's statement

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13. Defendant's statement

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14. Defendant's statement

673

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15. 2-page statement

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22

Defendant's Exhibits:

23

A. Photo

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24

B. Photo

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C. Photo

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D. Photo

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| BB. Photo | 758 | |
| CC. Photo | 758 | |